Upper Tribunal

(Immigration and Asylum Chamber) **Appeal number: DA/00500/2019 (P)**

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC **Decision & Reasons Promulgated**

On 27 August 2020 **On 9 September 2020**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

PEGGY BOURT-BOTRAND

(ANONYMITY ORDER NOT MADE)

Respondent

Representation:

For the appellant: Mr C Bates, Senior Presenting Officer

For the Respondent: Mr J Greer of counsel, instructed by AB James Solicitors

DECISION AND REASONS (P)

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. At the conclusion

of the hearing I reserved my decision, which I now give. The order made is described at the end of these reasons.

1. For the purposes of this hearing, I will refer to the parties as they were in the First-tier Tribunal.

2. The appellant is a French national with date of birth given as 16.4.81.

3. The Secretary of State has appealed to the Upper Tribunal with permission against the decision of the First-tier Tribunal promulgated 7.2.20, allowing on grounds of proportionality the appellant's appeal against the decision of the Secretary of State, dated 25.9.19, to make a deportation order against her, pursuant to the Immigration (EEA) Regulations 2016, following notice of liability to deportation served on 16.7.19.

4. The deportation order was made in the light of the appellant's criminal history and in particular her conviction on 7.7.11 for making a false representation to make a gain for herself or another, and her subsequent conviction on 30.4.19 for a money laundering offence. For the earlier offence the appellant was given a Community Order with an unpaid work requirement. However, for the most recent offence she was sentenced to a term of immediate imprisonment of 12 months.

5. The First-tier Tribunal concluded at [53] of the decision that the appellant had fallen far short of demonstrating that she had exercised Treaty rights for any period of 5 years so as to acquire a right of permanent residence. It follow that, despite her long residence in the UK, she was only entitled to the basic level of protection. There has been no cross-appeal against that finding, which must stand.

6. The grounds submit that the First-tier Tribunal made a material misdirection and provided inadequate reasoning for allowing the appeal. In particular, it is argued that in concluding in the risk assessment that the appellant would not reoffend, the judge failed to take into account the lack of evidence of remorse, rehabilitation, or acceptance of responsibility by the appellant for her actions.

7. It is also argued that in finding the appellant had integrated in the UK during her 17 years of residence, the judge relied on an inference of social ties when there was little if any evidence of integration before the First-tier Tribunal, so that the finding was inadequately reasoned. It is also submitted that the judge failed to consider the prospect of the appellant's rehabilitation in France, relying on Dumliauskas.

8. Finally, the grounds note that at [65] of the decision the judge considered the matter finely balanced and admitted having some hesitation before finding the appellant did not present a genuine, present and serious threat affecting the fundamental interests of society. In that light, the respondent argues that the reasoning supporting such a conclusion is inadequate.

9. Permission to appeal to the Upper Tribunal was refused by the First-tier Tribunal on 13.3.20, considering the grounds no more than a disagreement with the decision. However, when the application was renewed to the Upper Tribunal, Upper Tribunal

Judge Allen granted permission on 30.4.20, considering briefly that the grounds had identified arguable points of challenge going beyond mere disagreement. No other reasons were provided.

10. I have carefully considered the decision of the First-tier Tribunal in the light of the oral and written submissions and the grounds of application for permission to appeal to the Upper Tribunal.

11. For the purposes of the proportionality assessment, between [55] and [59] of the decision, the judge made an assessment of the seriousness of the appellant's criminal offending history, concluding at [59], "*The offence is serious if not the most serious examples of such offending and thus a woman with only one previous minor conviction was nevertheless given an immediate effective custodial sentence*." Again, there has been no appeal or cross-appeal against these findings.

12. The crucial and contested findings lie between [60] and [65] of the decision. The judge had to decide whether the appellant's removal was justified on grounds of public policy, the ground relied on by the respondent pursuant to Regulation 23, assessed on the criteria set out at Regulation 27(5) to (8) of the decision, as well as those considerations contained in Schedule 1. Inter alia, the judge was required to consider the proportionality of the decision and whether she was satisfied that the personal conduct of the appellant represented a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

13. In relation to 'fundamental interests' and the appellant's criminal offending, at [63], the judge was satisfied that "*prevention of an offence that underpins some of the most serious criminal offending such as drug dealing and trafficking and undermines the integrity of financial systems is a fundamental interest of society*." At [65] the judge repeated that "*this was a serious offence committed for personal gain*." There is no challenge by either party to these findings and self-direction.

14. In his submissions, Mr Bates relied on the absence of cogent reasoning for findings as to integration and rehabilitation.

15. Mr Greer submitted that the grounds were no more than a disagreement with the decision and that the decision disclosed lawful reasoning.

Integration

16. In respect of the requirement under Regulation 27(6) to consider the appellant's personal circumstances, her social and cultural integration into the UK, and the extent of her links with her country of origin, at [62] of the decision the judge took account of the long residence in the UK, involving some study and intermittent work, and ability to speak English, so that the judge found she would inevitably have forged social ties in the UK. The judge also noted that the appellant had lived in the UK for as long as she had in France or anywhere else. However, the judge noted the limited supporting evidence of integration. Other than a letter from her local church, stating that she had attended since 2015, there were no letters of support from

friends, neighbours, or others. No specific conclusion is reached at that paragraph but at [65] the judge stated that she took into account her "assessment of the degree of the appellant's integration after 17 years." In other words, the judge made an objective assessment of the evidence after hearing from the appellant.

17. Pointing to the lack of evidence of integration noted by the judge, Mr Bates submitted that the conclusion reached was inadequately reasoned and argues that an assumption of integration merely because of 17 years residence in the UK is insufficient to justify a finding that the appellant was integrated in the UK.

18. For his part, Mr Greer submitted that the respondent's argument was really about weight to be attached to various factors, which was a matter for the judge. It was submitted that adequate reasoning had been provided.

19. I accept that the decision does not address the issue of integration in any detail, which is perhaps unsurprising given the absence of supporting evidence. The letter from the church confirms that the appellant has been attending since 2015 and that "she is a nice person, kind, friendly and of good character someone you would trust." The letter says little else that assists in terms of integration. Nevertheless, in the appellant's favour reliance was placed on her integration as part of the proportionality assessment.

20. Some guidance on the level of integration required may be derived from paragraph [2] of Schedule 1, which provides:

> "*An EEA national or the family member of an EEA national having extensive familial and societal links with persons of the same nationality or language does not amount to integration in the United Kingdom; a significant degree of wider cultural and societal integration must be present before a person may be regarded as integrated in the United Kingdom.*"

21. It follows from paragraph [2] of Schedule 1 that mere presence in the UK over a period of time is insufficient alone to demonstrate integration. On the facts of this case, there was no evidence of any family ties in the UK or, indeed, of any societal links other the limited evidence of the appellant's church attendance. Whilst the appellant did not claim extensive familial or societal links with persons of the same nationality or language in the UK, I accept there was little evidence of any cultural and societal integration that might be considered of a 'significant degree of wider' integration than links to persons of the same nationality or language.

22. In relation to integration, paragraph [4] of Schedule 1 also provides that little weight is to be attached to integration if the "integrating links" were formed at or around the same time as the commission of a criminal offence or during the service of any sentence of imprisonment. It follows that the degree of integration that may be inferred from 17 years' residence in the UK may have to be discounted at least somewhat for the appellant's criminal offending behaviour for her own personal gain between 2011 and 2015, and her term of imprisonment.

23. Mr Bates relied on CI (Nigeria) v SSHD [2019] EWCA Civ 2027, and the factors there set out as to the type of evidence to be expected. However, Mr Greer pointed out that CI was a case involving non-EEA deportation and s117C rather than the regulations. I note that CI confirmed that criminal offending will not necessarily break social and cultural integration. Whilst CI was not able to point to any specific evidence of social and cultural integration, he had been in the UK since childhood and was educated here. The Court of Appeal found that the Upper Tribunal had asked the wrong question and assumed that criminal offending was inconsistent with integration. Despite the absence of postive evidence, on the facts of that case, the Court of Appeal considered the suggestion that he was not socially and culturally integrated did not have an "air of reality".

24. Despite the limited evidence of integration, I am satisfied that the judge was entitled to infer social and cultural integration from the fact of 17 years' residence in the UK and all that must involve, including that the appellant had studied and worked intermittently, and the church evidence. It is particularly significant that the appellant had lived in the UK as long as anywhere else and had in fact little time in the country of her nationality. In the premises, I am satisfied that it was open to the judge, hearing the appellant in oral evidence, to conclude that she was integrated into the UK.

Risk of Reoffending & Rehabilitation

25. In relation to the risk of reoffending referenced at [64] of the decision, at [65] the judge noted again the seriousness of the offence and that "*no OASYS report was provided as part of the bundle to make an informed assessment of risk moving forward*." However, the judge considered the strongest argument in the appellant's favour to suggest that she is rehabilitated was that the last offences occurred in 2015, although not prosecuted until 2018/19, and there was no evidence of her having committed other offences since. In reality, this was the only evidence of rehabilitation.

26. I note that the judge does not make a specific finding that the appellant has successfully rehabilitated or reformed, or make a finding as to the risk of reoffending, stating only in the same paragraph that the absence of offending was a factor, together with the degree of the appellant's integration, leading the judge to conclude that the appellant did not present a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

27. In relation to criminal offending, paragraph [3] of Schedule 1 provides:

> "*Where an EEA national or the family member of an EEA national has received a custodial sentence, or is a persistent offender, the longer the sentence, or the more numerous the convictions, the greater the likelihood that the individual's continued presence in the United Kingdom represents a genuine, present and sufficiently serious threat affecting of the fundamental interests of society.*"

28. In relation to successful rehabilitation, paragraph [5] of Schedule 1 provides:

> *"The removal from the United Kingdom of an EEA national or the family member of an EEA national who is able to provide substantive evidence of not demonstrating a threat (for example, through demonstrating that the EEA national or the family member of an EEA national has successfully reformed or rehabilitated) is less likely to be proportionate."*

29. As stated above, the respondent complains of a lack of reasoning and that the judge failed to take account of the prospect of the appellant's rehabilitation in France, which should not be regarded as any less likely than in the UK. However, Mr Greer submitted that the respondent had not raised rehabilitation in France, it was not a relevant consideration and not addressed by the respondent at the appeal hearing.

30. However, Mr Greer pointed out that the legal burden was on the respondent to demonstrate that the appellant represents a threat to one of the fundamental interests of society and pointed to the fact that the respondent had adduced no evidence to suggest that the appellant was likely to offend. By the date of the appeal hearing, the appellant had not reoffended for almost "half a decade", as Mr Greer put it, and that weight to be accorded to this factor was for the judge to determine. He disputed that there was any discernible pattern of criminal behaviour, as there had been a four-year gap between offences.

31. Whilst the judge addressed paragraph [5] of Schedule 1, it is clear that, as applied to the circumstances of this appellant, to fall in her favour in the proportionality balancing exercise requires "substantive evidence" that she has "successfully reformed or rehabilitated." However, I agree with Mr Greer's submission that whether an extensive period of not offending can amount to such substantive evidence, described by the judge as the strongest factor in the appellant's favour, was a matter for the judge to weigh in the overall balance.

32. In the premises, I am satisfied that it was open to the First-tier Tribunal Judge to conclude that the appellant did not present a a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. There was no positive evidence adduced by the respondent to demonstrate that she represented such a threat. The judge had to balance the history of criminal offending, together with the seriousness of the index offence, again the absence of offending over almost five years. To that end, the judge was entitled to take into account the degree of integration imputed from the length of residence and some study in the UK. In the final analysis, it was for the judge to determine the weight to be given to all of the factors set out above and as considered in the decision of the First-tier Tribunal. I cannot say that the findings were not open to the judge on the evidence or that they were inadequately reasoned.

33. In the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal so that it must be set aside and remade.

Decision

The appeal of the Secretary of State is dismissed.

The decision of the First-tier Tribunal stands and the appeal remains allowed.

I make no order for costs.

I make no anonymity direction.

Signed: *DMW Pickup*
Upper Tribunal Judge Pickup Date: 2 September 2020