Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00755/2018

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 11th February 2020	**On 3rd March 2020**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ALLAN DONOVAN ANEGBELE
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer
For the Respondent: Mr M Marziano, of Counsel, instructed by Weskin Associates Solicitors

DECISION AND REASONS

Introduction

1. The claimant is a citizen of France born in 1996. He arrived in the UK with his parents aged 2 years. His appeal against the decision to deport him under the Immigration (EEA) Regulations 2016 as a result of his having committed criminal offences was allowed by First-tier Tribunal Judge Hoffman in a determination promulgated on the 9th October 2019.

2. Permission to appeal was granted by Upper Tribunal Judge Kekic on 27th November 2019 on the basis that it was arguable that the First-tier judge had erred in law in finding that the claimant's integration had not been broken given his 15 convictions for 32 offences and the escalating severity of his offending, his gang involvement and the periods of time that he had spent in prison.

Submissions – Error of Law

3. The Secretary of State argues in summary in the grounds of appeal, skeleton argument, and refined in the oral submissions of Mr Clarke (who specifically did not rely upon the domestic case law of Binbuga (Turkey) v SSHD [2019] EWCA Civ 551 and Bossade (ss 117A-D interrelationship with Rules) [2015] UKUT IAC cited in the grounds) as follows. The finding of the First-tier Tribunal that the appellant has imperative protection due to having been in the UK for a period of 10 years prior to his first incarceration errs in law because his integrative links have been broken by his criminal behaviour and imprisonment during the ten year period immediately prior to the decision to expel him.

4. It is found by the First-tier Tribunal that the claimant's integrative links have been weakened because it is found he has gang affiliations; continues to use drugs; is at high risk of reoffending and a medium risk of harm; fails to understand the impact of his offending; and is disrespectful of the British justice system, relying particularly on the OASys report. It is concluded by the First-tier Tribunal however that his period of residence outweighs this and so he still has imperative protection because his integrative links have not been broken.

5. The Secretary of State argues that this approach fails to properly apply the decision of the Court of Justice of the European Union in SSHD v Vomero C424/16, dated 17th April 2018, because the findings with regard to the nature of his offending, the circumstances of his offending, his behaviour in prison ought to have negatively informed the decision with respect to integration and they did not; and the length of residence and period of residence prior to commencing offending ought not to have been treated as determinative of the integrative links remaining, but they were so treated. It is argued that the findings of the First-tier Tribunal paint a picture only of persistent criminality interrupting and breaking the integrative links of this claimant. There is no evidence set out of any positive links to the UK, even the account of his schooling is simply of him being expelled for having a knife. It is argued that ultimately the decision of the First-tier Tribunal is therefore perverse.

6. In a rule 24 notice and oral submissions from Mr Marziano, in summary, the claimant argues as follows. The First-tier Tribunal found that he had accrued 10 years continuous residence in the UK prior to his first period of imprisonment in 2013, based on his father's work and his attendance at school, see paragraph 49 of the decision. It was also found that he

had no ties with France bar his nationality and he could not speak the language at paragraph 51 of the decision. The First-tier Tribunal found that his integrating links with the UK had been disrupted but not broken at paragraph 27, and so he could only be deported if there were shown to be imperative grounds of public security. The First-tier Tribunal found, at paragraph 53 of the decision, that although his conduct in the UK was appalling, there were no imperative grounds of public security justifying his deportation and thus his appeal succeeded.

7. The only question in the appeal is whether it was properly found that he had those integrative links with the UK given his length of residence and conduct. The key relevant cases are, SSHD v Vomero [2018] EUECJ C424/16, SSHD v MG (Portugal) [2014] EUECJ C-400/12 and Tsakouridis (European Citizenship) [2010] EUECJ C-145/09.

8. MG (Portugal) specifically holds that the fact of having been in the UK for 10 years prior to imprisonment may be a consideration relevant to whether integrative links have been broken. However, it is clear that the relevant ten year period is the 10 years prior to the expulsion decision and whether the person was genuinely integrated in the host member state during that period, see Tsakouridis, but this case also makes it clear at paragraph 33 that the test of whether integrative links are maintained is largely focused on residence in the host member state and whether there are absences from the host member state. Although there may be other factors the Directive is silent on what they may be, although Article 28(1) suggests that age, length of residence and ties to the country of origin may be useful.

9. It is argued that the First-tier Tribunal therefore made a lawful decision with respect to the retention of integrative links as it was highly relevant to take into account the fact that the claimant had been in the UK since the age of 2 years and lived here ever since; that he had no ties to France and that he had ten years continuous residence prior to his first period of imprisonment. It was clear that the decision was made in the knowledge that the claimant had escalating serious offending, that there was a likelihood he had been involved with a gang and that the OASys report stated that he had a high risk of non-violent reoffending and a medium risk of harm to the public. Following Tsakouridis however, who was himself a convicted drug dealer, the decisive criterion in deciding if someone is integrated is the period of residence in the host member state.

10. With respect to Vomero , it is argued that all it does is add further detail about the other matters that might be relevant to breaking integration in the context of criminal sentences but it does not affect the overriding importance of length of residence and lack of absences from the host state in assessing whether the claimant had maintained his integrative links with the UK. Mr Maziano argued that there was a danger that the highest level of protection would never be applicable if this were not the case. He further pointed out that the appellant in Vomero had come to

the UK as an adult, making the other possible factors breaking his integration more relevant.

11. Mr Maziano accepted that there was no challenge in a cross appeal or in the rule 24 notice to the lack of any positive findings of fact with respect to the claimant's time in the UK prior to his criminal record commencing. He accepted therefore that there would be no need for any further hearing given the findings of the First-tier Tribunal as if I found that the First-tier Tribunal had erred in the interpretation of integrative links in the way argued for by the Secretary of State he accepted that the appeal would fall be dismissed.

Conclusions – Error of Law

12. The First-tier Tribunal sets out a detailed analysis of the evidence on the claimant's likelihood of committing further crime at paragraphs 36 to 44 starting from the point of the OASys report and including all other evidence on the issue. It is found, in summary, that on the balance of probabilities the claimant was involved with gangs, and that there was nothing which displaced the OASys conclusion that the claimant posed a high risk of reoffending and a medium risk of harm if allowed to remain in the UK.

13. When considering the claimant's residence at paragraph 45 to 49 of the decision it is clearly correctly understood by the First-tier Tribunal that the ten year period is counted back from the date of the removal decision (November 2018). It is clear that the claimant had been in the UK for this period of time, and was detained on four occasions as a result of his criminal behaviour. It is found that these periods of custody interrupted his continuous residence. It is then noted that the evidence shows that the claimant had residence for a period of ten years prior to the claimant's first period of imprisonment, as this was relevant to deciding whether the integrative links with the UK had been broken by way of an overall assessment, applying MG (Portugal).

14. At paragraphs 50 to 54 the First-tier Tribunal applies the facts of this case to the key issue: whether the integrative links of the claimant are broken. In concluding that the claimant still has integrative links with the UK significant weight is placed on the fact that the claimant has lived in the UK since he was two years old; that he had no ties with France and could not speak the French language; and that he had ten years continuous residence before being imprisoned. On this basis and despite the fact that it was found he had achieved little with his studies or work, had a poor relationship with his family and that no partner or friends had given evidence on his behalf it was found he was entitled to imperative grounds protection against deportation and that his offending did not meet this high threshold.

15. It is clear that a detailed consideration of the case of Vomero must inform my consideration of the question as to whether the First-tier

Tribunal has reached an irrational conclusion that the claimant maintains integrative links.

16. As a preliminary matter it is of relevance that Vomero finds, relying on Onuekwere C-378/12, that "integration, which is a precondition of the acquisition of the right of permanent residence laid down in Article 16(1) of Directive 2004/38, is based not only on territorial and temporal factors but also on qualitative elements, relating to the level of integration in the host Member State". I find that this statement is supportive of the fact that it was right for the First-tier Tribunal to have found that the claimant started from a position of integration in the UK despite the lack of any positive findings with regard to his pre-imprisonment period of residence in the UK because it is accepted by all that he had acquired a right of permanent residence.

17. In Vomero the Court of Justice of the European Union places specific reliance on the case of Tsakouridis which is found at paragraph 45 to mean that an expulsion decision must: "take account in particular of considerations such as how long the individual has resided on its territory, his or her age, state of health, family and economic situation, social and cultural integration into the host Member State and the extent of his or her links with the country of origin". At paragraph 64 of Vomero the Court again relies upon Tsakouridis and states that: "the fact remains that the decisive criterion for the grant of the enhanced protection provided for in Article 28(3)(a) of Directive 2004/38 is whether the Union citizen with a right of permanent residence in the host Member State, within the meaning of Article 16 and Article 28(2) of that Directive, has, as required by Article 28(3), resided in the Member State for the 10 years preceding the expulsion decision". At paragraphs 67 and 68 it is noted that the Directive is silent on "the circumstances which are capable of interrupting the period of 10 years' residence for the purposes of the acquisition of the right to that enhanced protection", but that Tsakouridis has held that what is needed is an "overall assessment" of the person's situation at the time of the expulsion decision. The Court in Vomero at paragraph 69 finds that the national authority must consider in particular the duration and nature of any absences from the host state. I find that the First-tier Tribunal has properly reflected this approach in its decision by giving very significant weight in its decision making to the ten year period of residence and lack of absences from the UK, whilst carrying out an overall assessment of the claimant's situation.

18. At paragraph 70 of Vomero the court considers the impact of imprisonment and finds that whilst in principle periods of incarceration interrupt the continuity of residence an assessment must be made as to whether imprisonment breaks integrative links previously forged, and thus periods of imprisonment must be put in the context of all other relevant factors including residence for a period of 10 years prior to imprisonment. At paragraph 71 the Court makes the point that particularly in the circumstances of someone who has resided for ten

years prior to commencing criminality imprisonment cannot be seen as "automatically breaking the integrative links" as that would "deprive the provision of much of its practical effect, since an expulsion measure will most often be adopted precisely because of the conduct of the person concerned that led to his conviction and detention." If a person is "genuinely rooted in the society of that State" then it's unlikely that integrative links are broken by imprisonment, although the nature of the offence and behaviour of the person in prison are relevant, see paragraphs 72 to 74. Again, I find that the First-tier Tribunal has followed the guidance set out in Vomero. I find that given the starting position of integration that the grant of permanent residence gives the claimant, along with his ten year period of residence in the UK prior to any imprisonment, his lack of absences from the host state and lack of any contact with France that it was within the range of rational options open to the First-tier Tribunal to conclude that ultimately these factors favoured a finding of the claimant's integrative links to the UK not having been broken even given the fact that the overall holistic assessment produced a considerable number of negative findings relating to the offending and the claimant's behaviour in prison.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

2. I uphold the decision of the First-tier Tribunal allowing the appeal of the claimant on EU grounds.

Signed: Fiona Lindsley Date: 18th February 2020
Upper Tribunal Judge Lindsley