



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00101/2020

THE IMMIGRATION ACTS

Heard at Birmingham Civil Justice Centre
On 12 August 2021

Decision & Reasons Promulgated
On 07 September 2021

Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

PIO MARIA FINAZZI
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Bates, Senior Home Office Presenting Officer
For the Respondent: In Person

DECISION AND REASONS

1. This is an appeal against the decision issued on 1 April 2021 of First-tier Tribunal Judge Steer which allowed the appellant's appeal against deportation under the Immigration (EEA) Regulations 2016 (the EEA Regulations).
2. For the purposes of this decision I will refer to the Secretary of State for the Home Department as the respondent and to Mr Finazzi as the appellant, reflecting their positions before the First-tier Tribunal.

3. The appellant was born on 7 September 1996 in Ethiopia. He subsequently obtained Italian nationality. The accepted evidence is that he has been in the United Kingdom since 2015. It has not been found that he has been exercising Treaty Rights for that period of time and so is not entitled to be treated as having established permanent residence for the purposes of the EEA Regulations.
4. The appellant has a criminal history. On 26 February 2016 he was convicted of offences against property (two offences of criminal damage which took place on 1 January 2016) and was given a community order, £150 compensation and an eight week curfew with electronic tagging. He was also convicted of offences against the person (four offences of battery which took place on 23 July 2018) and was given a community order, unpaid work and rehabilitation activity requirements, £100 compensation, 85 victim surcharge and £300 costs.
5. On 24 September 2019 the appellant was sentenced to twelve months' imprisonment with a £149 victim surcharge for an offence committed on 26 August 2019 of possession/use of an offensive weapon in a public place. On the same date the community order from the sentence in 2018 was revoked and that sentence varied to a two months' custodial sentence to run concurrently with the twelve month sentence.
6. The conviction for possession of an offensive weapon and sentence of twelve months led the respondent to commence deportation proceedings against the appellant. On 13 November 2019 the respondent made a decision to deport the appellant under the EEA Regulations. The appellant appealed that decision to the First-tier Tribunal, resulting in the decision dated 1 April 2021 of First-tier Tribunal Judge Steer, allowing his appeal.
7. In paragraphs 3 and 4 of the decision the First-tier Tribunal set out the respondent's case against the appellant. This included, in paragraph 4, details of the index offence including the sentencing remarks.
8. The judge proceeded to set out details of the documents that were before her and the oral evidence in paragraphs 7 to 12. The submissions of the representatives were recorded in paragraphs 13 and 14. The judge set out the applicable law in paragraphs 16 and 17. In paragraphs 18 to 26 she set out her reasons for finding that the appellant did not represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.
9. The grounds of appeal challenge two main aspects of the decision of the First-tier Tribunal. Firstly, the respondent takes issue with the statement of the judge in paragraph 19 of the decision that:

"I do not find there to have been an escalation in offending over time since the offence of criminal damage in 2016 was not relevant to the later offences, and those offences were committed two and three years later, triggered by the death of the appellant's father in 2018 and the resulting alcohol dependency on the part of the appellant. I do

not find that the appellant's previous convictions show that he has propensity to offend or that he is a persistent offender."

This part of the respondent's grounds also maintain that the judge sought to "minimise the seriousness of the appellant's offending".

10. The respondent's second ground is that the judge was in error in finding that the appellant no longer has a problem with alcohol. The grounds state that "there is no evidence to support this finding beyond a bare assertion by the appellant."

11. I can deal with the second ground relatively easily. The judge considered the appellant's evidence regarding his abuse of alcohol in paragraphs 24 and 25 of the decision. She set out in paragraph 24:

"24. ... The appellant gave evidence that he had suffered from a temporary alcohol dependency due to the death of his father in 2018, that he had only realised his dependency during his prison sentence and that he had been sober since his release from prison 18 months earlier. This evidence was not challenged by the respondent. In view of the sentencing judge's remarks, as to a loss of control likely due to a drink or drug problem, the concurrency of the custodial sentence for the offences of battery, also committed after the death of the appellant's father, the appellant's unchallenged evidence that he no longer has a drink problem and his subsequent lack of convictions since his release from prison 18 months earlier, I accept that the offences of battery and possession/use of an offensive weapon were 'out of character' and, most certainly, there has been no indication of any conduct of a similar nature before, or, indeed, since.

25. The appellant gave his evidence in a clear and straightforward manner and Mr Williams found no reason to challenge the credibility of the account given by the appellant in his oral evidence. I, too, found him credible on the balance of probabilities"

12. In light of those findings it is not arguable that the judge erred in concluding that the appellant no longer had a problem with alcohol. This was the appellant's evidence before her. It was not challenged by the respondent. Nothing else in the appellant's evidence suggested that he should not be found to be a credible witness on this point. Nothing in his conduct suggested that he had an ongoing problem with alcohol. It was clearly open to the judge to find that the appellant was no longer abusing alcohol and the respondent's second ground therefore has no merit.

13. I also did not find that the respondent's first ground had merit. The grounds maintain that the judge gave inadequate reasons for concluding that the appellant's offending had not escalated in seriousness or reached an irrational conclusion in so finding. The judge set out carefully in paragraphs 19 to 22 of the decision why it was her view that the appellant's history of offending did not show the kind of escalation that indicated he would offend again. That assessment took into account all of the appellant's offending, the offences from 2016 being referred to specifically in paragraphs 2, 4, 11, 13, 19, 21 and 22. The reference to "relevant" offences in paragraph 19 and 23 is to the offences that led the respondent to commence

deportation action and the use of the term is not sufficient to suggest that the judge ignored the 2016 offences or “minimised” the appellant’s forensic history. The statement that the 2016 offences were not taken into account when the sentencing judge when assessing the appropriate sentence was a matter the judge was entitled to take into account. She was equally entitled to conclude that there was a difference in the two periods of offending, the first being before the death of the appellant’s father and the appellant beginning to abuse alcohol and the latter being after those events. The evidence before the First-tier Tribunal entitled the judge to draw that distinction and to conclude that the appellant’s profile did not show a pattern of escalation of offending that indicated there was a sufficiently serious risk of reoffending. The judge identified factors that entitled her to conclude that the appellant was not on a straightforward path of escalating offending. The decision sets out adequate reasons for that conclusion and that conclusion is not irrational.

14. It was suggested before met that the appellant’s evidence as recorded in paragraph 14 of the decision was that he had made statements indicating that he had also been abusing alcohol at the time of the offences committed in 2016. It appeared to me, however, that the statements recorded in paragraph 14 were referring to the offences committed in 2018 and 2019 and not those committed in 2016.
15. For all these reasons, I did not find that the decision of the First-tier Tribunal showed a material error on a point of law.
16. Mr Finazzi should be under no doubt, however, that he will not be able to rely on the decision made here by the First-tier Tribunal if he commits any further offences whilst he is in the UK, further deportation proceedings being very likely, if not inevitable, in that event and entirely likely that the Tribunal would view his case very differently.

Decision

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

Signed *S Pitt*
Upper Tribunal Judge Pitt

Date: 13 August 2021