IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003540, UI-2023-003541
First-tier Tribunal No: EU/07503/2022, DA/00246/2020

THE IMMIGRATION ACTS

Decision and Reasons Issued:

On 4th of July 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE MALIK KC

Between

SECRETARY OF STATE
FOR THE HOME DEPARTMENT

Appellant

and

GEORGE KUPATADZE
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation

For the Appellant: Mr David Clarke, Senior Presenting Officer
For the Respondent: Mr Rajinder Claire, Counsel, instructed by Direct Access

Heard at Field House on 15 May 2024

DECISION AND REASONS

Introduction

1. This is an appeal by the Secretary of State from the decision of First-tier Tribunal Judge Beach ("the Judge") promulgated on 7 August 2023. By that decision, the Judge allowed Mr George Kupatadze's linked appeals from the Secretary of State's decisions to deport him

from the United Kingdom and to refuse his application under the European Union Settlement Scheme ("EUSS").

Factual background

2. Mr Kupatadze is a citizen of Georgia and was born on 14 February 1975. He arrived in the United Kingdom in 2011 and married Ms Aleksandra Noskova, a citizen of Latvia exercising Treaty rights in the United Kingdom, on 18 December 2014. He was issued with a residence card as the family member of Ms Noskova on 30 March 2016 until 30 March 2021. They have two children born on 28 October 2017 and 22 January 2021 respectively. The children are British citizens. The marriage between Mr Kupatadze and Ms Noskova ended with a divorce on 16 June 2022. Mr Kupatadze, however, continues to have a parenteral relationship with the children.

3. Mr Kupatadze was convicted at the Isleworth Crown Court on 25 July 2018 on one count of conspiring to do an act to facilitate the commission of a breach of immigration law and three counts of doing an act to facilitate the commission of a breach of immigration law. He was sentenced to 3 years and 5 months in custody on each count to be served concurrently on 4 September 2019. The Secretary of State issued a notice to him on 19 September 2019 that he was liable to deportation in the light of his criminal conduct. He made certain representations in reply on 11 November 2019. The Secretary of State made a decision to deport him from the United Kingdom on 20 March 2020. He made an application under the EUSS on 24 January 2021. The Secretary of State refused that application on the basis of his criminality on 25 July 2022.

4. The Judge heard Mr Kupatadze's linked appeals from the Secretary of State's decisions on 10 July 2023. He gave evidence and was cross-examined. It was common ground that he did not qualify for permanent residence the Immigration (European Economic Area) Regulations 2016 ("the 2016 Regulations") and, therefore, he enjoyed the lowest level of protection against deportation. The Judge found that he was at low risk of re-offending and does not pose a genuine, present and sufficiently serious threat to public policy or security. The Judge held that his deportation would not be proportionate under the 2016 Regulations. The Judge considered the human rights grounds separately and held that his deportation would be compatible with Article 8. The Judge, accordingly, allowed the appeals under the 2016 Regulations and the EUSS in a decision promulgated on 7 August 2023. The Secretary of State was granted permission to appeal from the Judge's decision on 24 November 2023.

Grounds of appeal

5. The sole ground of appeal is that the Judge failed to give adequate reasons for findings on material matters.

Submissions

6. I am grateful to Mr Clarke, who appeared for the Secretary of State, and Mr Claire, who appeared for Mr Kupatadze, for their assistance and able submissions. Mr Clarke developed the pleaded grounds of appeal in his oral submissions. He invited me to allow the appeal and set aside the Judge's decision. Mr Claire resisted the appeal and submitted that the Judge's findings were adequately reasoned and disclosed no error of law. He invited me to dismiss the appeal and uphold the Judge's decision.

Discussion

7. The applicable legal principles are well-settled. The First-tier Tribunal is a specialist fact-finding tribunal, and the Upper Tribunal should not rush to find an error of law in its decisions simply because it might have reached a different conclusion on the facts or expressed themselves differently, as the appeal is available only on a point of law: see *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49 [2008] 1 AC 678, at [30]. Where a relevant point is not expressly mentioned by the First-tier Tribunal, the Upper Tribunal should be slow to infer that it has not been taken into account: see *MA (Somalia) v Secretary of State for the Home Department* [2010] UKSC 49 [2011] 2 All ER 65, at [45]. When it comes to the reasons given by the First-tier Tribunal, the Upper Tribunal should exercise judicial restraint and should not assume that the First-tier Tribunal misdirected itself just because not every step in its reasoning is fully set out: see *Jones v First-tier Tribunal and Criminal Injuries Compensation Authority* [2013] UKSC 19 [2013] 2 All ER 625, at [25]. The issues that the First-tier Tribunal is deciding and the basis on which the First-tier Tribunal reaches its decision on those issues may be set out directly or by inference: see *UT (Sri Lanka) v The Secretary of State for the Home Department* [2019] EWCA Civ 1095, at [27]. Judges sitting in the First-tier Tribunal are to be taken to be aware of the relevant authorities and to be seeking to apply them without needing to refer to them specifically, unless it is clear from their language that they have failed to do so: see *AA (Nigeria) v Secretary of State for the Home Department* [2020] EWCA Civ 1296 [2020] 4 WLR 145, at [34]. It is the nature of the fact-finding exercise that different tribunals, without illegality or irrationality, may reach different conclusions on the same case and the mere fact that one tribunal has reached what may seem an unusually generous view of the facts of a particular case does not mean that it has made an error of law: see *MM (Lebanon) v Secretary of State for the Home Department* [2017] UKSC 10 [2017] WLR 1260, at [107].

8. The reasons given by the First-tier Tribunal for its findings on the principal controversial issues must be adequate. The reasons must

explain to the parties why they have won and lost on those issues: see *English v Emery Reimbold and Strick* [2002] EWCA Civ 605 [2002] 1 WLR 2409, at [16]. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the main issues in dispute: see *South Bucks District Council and Anor v Porter* [2004] UKHL 33 [2004] 4 All ER 775, at [36]. A challenge based on the adequacy of reasons should only succeed when the appellate body cannot understand the fact-finder's thought process in making material findings: see *R (Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982 [2005] Imm AR 535, at [15].

9. The principal controversial issue before the Judge was whether Mr Kupatadze posed a genuine, present and sufficiently serious threat to the public policy or security. The Judge addressed that issue at [39]-[47]. Mr Kupatadze maintained before the Judge that he was not aware that he was committing a criminal offence at the time. He had attempted to bring Georgian nationals with no leave to enter or remain from Dublin to Holyhead. He stated that he was unaware at the time that this was wrong. The Judge, at [42], took the view that this account does not ring true in the light of his background. The Judge then considered the OASys assessment and, at [45], found:

> "The appellant was noted to have a positive attitude towards employment and to be actively seeking employment. Financial gain was not considered to be a motivator for the offence and in any event, the appellant is now working in the UK …"

10. The difficulty, however, is that His Honour Judge Wood, who sentenced Mr Kupatadze on 4 September 2019, stated as follows in his sentencing remarks:

> "… Your motivation was clearly commercial rather than humanitarian but, again, I bear in mind the sums involved and I agree, as emerged in the trial and as Mr Mills has opened, effectively it was £200 per person per fare … By the fact, of course, that it was repeated offending, it means there were a number of individuals or, as they were known, beneficiaries, in the course of the trial."

11. Mr Kupatadze was sentenced on the basis that his motivation for the offending was commercial but the Judge in this appeal proceeded on the basis that financial gain was not considered to be a motivator. The Judge was obliged to give reasons for her departure from the sentencing remarks. There is no explanation in the Judge's reasons as to why, contrary to the view taken by His Honour Judge Wood, she took the view that financial gain was not considered to be a motivator.

12. I asked Mr Claire to consider the OASys assessment in order to see if there is anything in it that might explain the Judge's view. Mr Claire

took time to consider the OASys assessment and then confirmed that there is nothing in it as to financial gain not being a motivator. However, even if the OASys assessment had found that financial gain was not a motivator, the Judge was obliged to explain why that view was being preferred over the view taken by His Honour Judge Wood in his sentencing remarks. There is no such explanation in the Judge's decision.

13. The Judge referred to the fact that Mr Kupatadze "is now working" when considering the issue of motivation. Mr Claire, on instructions, confirmed that Mr Kupatadze was working in 2018 at the time of his offending. If his employment at the time did not deter him from committing those crimes for commercially motivated reasons, there is a question as to how his current employment would act as a deterrence. There is no engagement with that question in the Judge's reasons. The Judge, in principle, was entitled to attach weight to Mr Kupatadze's current employment but was obliged to explain how it would act as a deterrence in the circumstances.

14. It follows that the Judge's reasons on the principal controversial issue are inadequate.

15. Mr Claire made submissions on the underlying facts of the case. He submitted that the Judge's reasoning, at [45], was not necessarily material to the outcome. He reminded me that Mr Kupatadze was previously of good character and has not committed any further crimes. He submitted that there was a low risk of re-offending and no genuine, present and sufficiently serious threat to public policy and security.

16. There is considerable force in Mr Claire's submissions. I must, however, bear in mind that I am not sitting as a first instance tribunal making findings of fact or assessing proportionality of the deportation decision. My task is to decide whether the Judge erred on a point of law such that the decision should be set aside. I cannot rule out the possibility that a properly directed Judge may find that Mr Kupatadze poses a genuine, present and sufficiently serious threat to public policy and security and that his deportation would comply with the principle of proportionality. I find that inadequacy of the Judge's reasons was material to the outcome and constituted an error of law. It would be appropriate for this matter to be considered afresh with the benefit of updated evidence and submissions on facts.

Conclusion

17. For all these reasons, I find that the Judge erred on a point of law in making her decision and the error was material to the outcome. I set aside the Judge's decision. I apply the guidance in *AB (preserved FtT findings; Wisniewski principles) Iraq* [2020] UKUT 268 (IAC) and conclude that no findings of fact are to be preserved. Having regard

to paragraph 7.2 of the Senior President's Practice Statement for the Immigration and Asylum Chambers, and the extent of the fact-finding which is required, I remit the appeal to the First-tier Tribunal to be heard afresh by a judge other than First-tier Tribunal Judge Beach.

Decision

18. The First-tier Tribunal's decision is set aside and the appeal is remitted to the First-tier Tribunal for a fresh hearing.

Anonymity

19. I consider that an anonymity order is not justified in the circumstances of this case having regard to the Presidential Guidance Note No 2 of 2022, *Anonymity Orders and Hearing in Private*, and the overriding objective. I make no order under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Zane Malik KC
Deputy Judge of Upper Tribunal
Immigration and Asylum Chamber
Date: 1 July 2024