



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001082

First-tier Tribunal No: EA/01018/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 18 November 2024**

Before

UPPER TRIBUNAL JUDGE KHAN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**STANINIR EMILOV ASENOV
(NO ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Ms H Gilmour, Home Office Senior Presenting Officer

For the Respondent: Ms K Reid of Counsel, instructed by Kilic Solicitors

Heard at Field House on 6 November 2024

DECISION AND REASONS

1. This is an oral decision following submissions heard in this appeal remotely on the cloud video platform from both representatives. I am confident that everyone was able to hear and fully participate in the hearing in a fair and transparent manner. I am grateful to Ms Reid and Ms Gilmour for their valuable submissions and cooperation. For convenience, I will refer to the parties as they were designated in the First-tier Tribunal.
2. This is an appeal, by the Secretary of State, against a decision of Judge of the First-tier Tribunal Bagral ('the judge') promulgated on 20 February 2024 allowing the appellant's appeal against a deportation order and a refusal of leave to remain on human rights grounds (Article 8 ECHR).
3. The appellant is a citizen of Bulgaria and has also acquired Turkish citizenship. He is a foreign criminal, as defined by Section 72 of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act'). Section 32(5) of the UK Borders Act 2007

requires his deportation unless he can bring himself within one of the exceptions set out in Section 33 of that Act.

4. The claimant came to the UK in December 2018 as an EEA national exercising treaty rights. On 24 October 2019, he applied for leave to remain under the EUSS residence scheme Immigration Rules. On 13 November 2019, he was granted limited leave to remain until 14 November 2024 (pre-settled status).
5. On 17 October 2022, the claimant was convicted by jury of Assault Occasioning Bodily harm ('the index offence') against his ex-wife ('Ms A'). On 9 December 2022, he received a sentence of 14 months' imprisonment, a restraining order was imposed for 12 years, and he was ordered to pay a victim surcharge.
6. On 3 January 2023, the Secretary of State wrote to the claimant indicating that a deportation order would be made and on 6 January 2023, the claimant was served with a Stage 1 deportation notice, which invited him to raise any human rights grounds on which he relied, which he did on 14 February 2023.
7. On 09 October 2023, the claimant's human rights claim was refused, and a deportation order was signed on 10 October 2023. The claimant appealed to the First-tier Tribunal.
8. The sole ground of appeal brought by the Secretary of State is that the judge failed to engage with all material evidence with regard to the appellant's continued risk which justified his deportation from the United Kingdom and as such the overall findings and decision to allow the appeal are inadequately reasoned.

Decision of the First-tier

9. The First-tier Judge allowed the appeal outside of the Immigration Rules on the basis that deportation would not be proportionate and would constitute a breach of Article 8 ECHR. The judge found that the appellant's family life rights, and those of his children would be engaged by his deportation and as such there were very compelling circumstances under s117C(6) of the 2002 Act that outweighed the public interest in his removal due to his subsisting relationship with his three children.
10. At [112] the First-tier Judge stated that there was no suggestion that the appellant posed a physical risk then, or now, to his children, nor any risk to the public generally, or to any future partner. At [113] the judge noted that the OASys report completed on 28 March 2023, and referred to in the human rights decision, was not before her, but that the human rights decision did not identify from the OASys report or any other report that the claimant presented a current risk to either the public, his children or a future partner.
11. It is against this background that the Secretary of State appealed to the Upper Tribunal.

Permission to appeal

12. The sole ground of the Secretary of State's appeal concerns the First-tier Tribunal's failure to provide adequate reasons for a material finding. In this regard, the Secretary of State observed that 'due to an oversight' the judge was

not provided with a copy of the claimant's OASys report. As a result, it is averred that the judge proceeded on a false factual basis.

13. In this regard, at [113] the judge confirmed that the report (dated 28 March 2023) was not before her and that the decision did not identify any '*evidence that the [appellant] presents a current risk either to the public, his children, or a future partner*'. At [146] the judge sets out the factors militating against the appellant's deportation which included that he '*does not pose a risk to the public and it is accepted there is no evidence that he poses a risk to a future partner*'.
14. At paragraph 10.3 (page 27) of the report, the appellant is assessed as posing a high risk of serious harm to known adults and a medium risk of serious harm to children (which included a risk of physical harm were they to find themselves caught up in any of the offending [at 10.2 of the report]).
15. Permission to appeal to the Upper Tribunal was granted by First-tier Judge Curtis in the following terms, so far as relevant to the sole ground:

"...5. I acknowledge that in [145[f] the judge refers to the medium risk of the Appellant causing emotional harm to his children should they witness further harm committed by him against their mother. However, it is arguable that the OASys risk assessment went further than that in concluding that there was a medium risk of serious harm being caused to the children by the Appellant (which included a risk of physical harm were they to find themselves caught up in any of the offending -10.2- and I note they were present for part of the Appellant's offending).
16. "...6. It is further arguable that had the judge known of the risk assessment in the OASys report about the risk to the children, she may have reached a different conclusion about their best interests and/or that it would be unduly harsh on them for the Appellant to be removed'.
17. The granting judge said, I am entitled to consider this if the new evidence is submitted to demonstrate unfairness or that the decision was based on an entirely false factual hypothesis (cf. **E & R [2004] EWCA Civ 49**).

Grounds of Appeal

18. The Secretary of State's appeal sets out one single ground, which is sub-divided from (a) to (f). The principal ground, which is really one 1(b) cites that, due to an oversight, the First-tier Judge was not provided with the appellant's OASys report, although relevant sections from this were referenced within the decision letter dated 10 October 2023 that was served on the Tribunal in advance of the hearing. In essence, the Secretary of State argues that Mr Asenov presents a genuine risk to the public and that the First-tier Tribunal has failed to provide adequate reasons to the contrary. The remaining grounds at 1(a), (c), (e) and (f) all relate to the absence of the OASys Report being in front of the First-tier Judge, under the single ground of appeal being that the judge failed to provide reasons or any adequate reasons for findings on material matters.
19. The Secretary of State also filed an application pursuant to rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to admit a copy of the OASys Report.

Rule 24 Reply

20. The appellant filed a Rule 24 Reply opposing the appeal. He submitted that the judge gave detailed reasons for the decision reached and they remain sustainable notwithstanding that the OASys report was not available before the First-tier Tribunal.
21. This is the basis upon which the appeal came before the Upper Tribunal.

Analysis

22. At the outset of the hearing, Ms Gilmour, stated that she had been instructed to withdraw the application to admit the evidence comprising the OASys report as there was no explanation as to why it was not before the First-tier Judge. It would appear to have been a simple oversight. As a result, the Secretary of State had also instructed her to withdraw Ground 1(b) of the appeal grounds and any of the related grounds that relied on the OASys report.
23. I heard submissions in relation to grounds 1(a), (c), (d), (e) and (f) and it is clear that in relation to these grounds, apart from 1(d), they are all infected by the absence of the OASys report. It must therefore follow that as 1(b) has been formally withdrawn by Ms Gilmour, on behalf of the Secretary of State, I must find that in relation to 1(a), 1(c), 1(e) and 1(f) they are also infected with the same concerns over the OASys report and should also be withdrawn or dismissed as they are unable to establish an arguable material error of law.
24. That leaves however, 1(d) of the Secretary of State's grounds of appeal. This states that the appellant remained on licence at the time of the hearing, heard on 24 November 2023, with the licence expiring on 8 February 2024 and so the threat of being recalled to prison has been a material deterrence since being released. However, it is submitted that the appellant's propensity to reoffend has not truly been tested because of this and so the First-tier Tribunal Judge's reliance on his lack of reoffending today is misplaced.
25. I heard submissions from Ms Reid, who appears on behalf of Mr Asenov. In her skeleton argument at paragraph 14 she stated, 'The appellant suggests at paragraph 1(d) of the grounds of appeal that the appellant's propensity to reoffend has not been tested and the judge's reliance on his lack of reoffending is therefore misplaced. Notwithstanding that this is not an argument the appellant made before the judge, the judge acknowledged at paragraph 146(h) that the appellant has not been long out of custody.
26. When I turn to paragraph 146 of the First-tier Judge's decision, paragraph 146(h) falls under the preamble of factors militating against the appellant's deportation order, which includes at (h):

The appellant has not reoffended and was assessed as presenting a low risk of reoffending generally in the pre-sentence report before the sentencing judge. Whilst the appellant has not long since been released from detention, he has not reoffended or breached the restraining order.
27. In the circumstances, it seems to me that it is incumbent on the Secretary of State to identify how 1(d) constitutes a material error of law. The ground does not say how or why the judge's reasoning on this matter constitutes a material error of law and Ms Gilmour was unable to assist me. In my judgment, ground 1(d) of the appeal amounts to no more than a mere disagreement with the reasoning of the judge and discloses no material error of law.

28. Turning to summarise the position, the Secretary of State's application to admit evidence is formally withdrawn and the OASys Report is therefore not admitted. The Secretary of State has also formally withdrawn paragraph 1(b) of the grounds of appeal, which is premised on a failure to provide reasons or any adequate reasons for findings on material matters based on the OASys Report. I find based on Ms Gilmour's submissions that it must follow that the remaining grounds 1(a), (c), (e) and (f) are also infected by the absence of the OASys Report and should also be withdrawn. In the alternative, I hereby dismiss those grounds, together with 1(d), as disclosing no material error of law.
29. For these reasons, the appeal fails. I find that the Secretary of State's appeal has not identified a basis to disturb the First-tier Judge's conclusions.

Notice of Decision

30. The decision of the First-tier Tribunal did not involve the making of a material error of law and therefore stands.

K.A.Khan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

13 November 2024