IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002971

First-tier Tribunal No: DA/00056/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
5th December 2024

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

Secretary of State for the Home Department

Applicant

and

Kejvi Lala
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr E. Terrel, Senior Home Office Presenting Officer
For the Respondent: Ms L. Katko, Counsel, Richmond Chambers LLP

Heard at Field House on 7 October 2024

DECISION AND REASONS

1. The principal controversial issue in these proceedings is whether the First-tier Tribunal gave sufficient reasons for its finding that the respondent to these proceedings did not represent a "genuine, present and sufficiently serious threat affecting one of the fundamental interests of society", in light of his conviction for the possession of a Class A drug with the intent to supply, and subsequent sentence of imprisonment of two years and three months.

2. That question arose before First-tier Tribunal Judge Roots ("the judge") in an appeal brought by Kejvi Lala, a citizen of Greece born in April 1994, under the Immigration (European Economic Area) Regulations 2016 ("the 2016 Regulations"). The judge allowed the appeal. The Secretary of State now appeals with the permission of Upper Tribunal Judge O'Brien.

3. Although this is an appeal of the Secretary of State, I will refer to Mr Lala as "the appellant" from now on.

Factual background

4. On 30 August 2022, the appellant was sentenced to two years and three months' imprisonment for a single count of the possession of a Class A drug with intent to supply, having pleaded guilty at the Plea and Trial Preparation Hearing. The sentence imposed thus reflected a 25% discount of the sentence the appellant would have received but for his plea.

5. The appellant moved to the United Kingdom from Greece in 2018. The offence was committed in August 2020. It was common ground that, prior to his offending, the appellant had been lawfully residing in the United Kingdom under to the Immigration (European Economic Area) Regulations 2016 ("the 2016 Regulations"). This was his first offence. He had not reoffended by the time the judge heard the appeal on 23 May 2024, having been released from prison in October 2023.

6. The judge concluded that the Secretary of State had not established that the appellant represented a "genuine, present and sufficiently serious threat affecting one of the fundamental interests of society". The judge observed (paragraph 13) that the Secretary of State's case against the appellant was based primarily on his single conviction, and the length of his sentence of imprisonment.

7. The judge's conclusion was based on his analysis that the appellant had only a single conviction and was otherwise (by which the judge must have meant *previously*) of good character. The conviction was in respect of conduct that occurred in August 2020. The judge heard the appeal in May 2024.

8. The judge ascribed particular significance to the OASys report dated 22 November 2022. It concluded that the appellant represented a low risk of reoffending and a low risk of absconding.

9. The judge noted that there were no aggravating features of the appellant's offending. The appellant now understood the wider impact of his conduct. He had taken responsibility for what he did. All risk indicator scores were low. He was motivated not to reoffend. He had undertaken courses while in prison and had been granted enhanced status: see paragraph 19. There had been no issues with the appellant's compliance with his electronic tag, nor had he failed to comply with the bail conditions to which he was subject.

10. There was one issue raised by the Respondent's Review, concerning a report of negative behaviour by the appellant while he was in prison. At paragraph 21, the judge said that the page references for those reports were incorrect and that he could not find the entries he had been referred to. In any event, such reports would have to be viewed against the overall positive conduct of the appellant while he was in prison. There was a suggestion that there had been widespread concern among prisoners about the lack of heating in the prison at the time, and the appellant's conduct had to be viewed in that light. When viewed against the OASys report's analysis concerning the appellant's broader risk profile, these concerns fell away, the judge found. The Secretary of State did not challenge this part of the judge's reasoning, and I need say no more about it.

11. One of the main motivating factors which had led the appellant to offend, in the view of the OASys report, was financial; he wanted money to support his brother. Yet, as the judge observed, the appellant had not been able to work since his release from prison and had not reoffended. That addressed was one of the major concerns relied upon by the refusal letter, the judge concluded. See paragraph 23.

12. The judge said that the appellant's assertions of remorse carried little weight, as did his evidence of rehabilitation, since he had only been at liberty for a relatively limited period. Overall, the judge found, that the risk profile, as assessed by the OASys report was the main factor.

Issues on appeal to the Upper Tribunal

13. There is a single ground of appeal pleaded under the rubric of failing to give sufficient reasons. The judge did not have the appellant's conviction "sufficiently in mind", failed to address Schedule 1 to the 2016 Regulations and failed to have adequate regard to his own findings that the appellant's assertions of rehabilitation attracted little weight.

14. The grounds also contended that the judge failed to address the role that the appellant's licence conditions would have had on the OASys report's conclusion that he posed a low risk of reoffending. Mr Terrell placed the most emphasis on this aspect of the grounds in his oral submissions. He submitted that the operative reasoning of the body of the report addressed the protective factors which were necessary to prevent the appellant from reoffending. The fact that those restrictions were necessary itself demonstrated that the appellant represented a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Those protective factors were also reflected by the report's overall conclusion that the appellant represented a low risk of reoffending. The judge's analysis was infected by the error described in *Secretary of State for the Home Department v AA (Poland)* [2024] EWCA Civ 18 at paragraph 59.

15. Accordingly, in Mr Terrell's submission, the judge engaged in double counting. He took impermissible account of the license-based restrictions to which the appellant was subject as an indicator of his reduced risk profile, and in turn ascribed too much significance to the report's overall conclusion concerning the appellant's risk profile, since that conclusion itself was based on the impact of the protective factors to which the appellant would be subject.

16. The appellant relied on a rule 24 notice dated 4 September 2024, and a skeleton argument dated 4 October 2024. I heard submissions from both parties and reserved my decision.

Legal framework

17. The legal framework under the 2016 Regulations is well known. It is not necessary for me to set it out here. It was quoted at length at paragraph 9 of the judge's decision.

18. It is well established that the conclusion that a judge has given insufficient reasons will not readily be drawn: see *South Buckinghamshire District Council v Porter (No 2)* [2004] UKHL 33, at paragraph 36. See also *English v Emery Reimbold & Strick Ltd. (Practice Note)* [2002] EWCA Civ 605 at, for example, paragraph 118:

> "…an unsuccessful party should not seek to upset a judgment on the ground of inadequacy of reasons unless, despite the advantage of considering the judgment with knowledge of the evidence given and submissions made at the trial, that party is unable to understand why it is that the Judge has reached an adverse decision."

19. The Court of Appeal held in *Re Sprintroom Ltd* [2019] EWCA Civ 932, [2019] BCC 1031 at paragraph 76:

> "…on a challenge to an evaluative decision of a first instance judge, the appeal court does not carry out a balancing task afresh but must ask whether the decision of the judge was wrong by reason of some identifiable flaw in the judge's treatment of the question to be decided, 'such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion'."

Sufficient reasons given by the judge

20. I find that the judge gave sufficient reasons for his conclusion.

21. He analysed this single-incident, one off offence committed by a man of previous good character. The main risk factor, in the view of the OASys report, was the appellant's approach to the financial motivation for his offending. The judge was fully aware of that aspect of the appellant's risk profile, and addressed it at paragraph 23, noting that he had not re-offended, despite being unable to work.

22. Mr Terrell's main submission was that the judge double-counted the protective factors which the OASys report referred to. Properly understood, such a criticism is more of a rationality challenge, or a misdirection of law challenge, rather than a sufficiency of reasons challenge. In any event, while as put by Mr Terrell those submissions were superficially attractive, they are not substantiated by the terms of the OASys report itself. Mr Terrell took me to a number of passages in the OASys report. Upon closer examination, they do not, contrary to his submissions, demonstrate that the report's conclusion concerning the appellant's overall risk profile had been was a reflection of the appellant's licence conditions and other restrictions (such as police bail prior to his sentence of imprisonment). Rather, the tenor of the report is that the primary risk factor bearing upon the appellant was his attitude to his money, and his acquisitive desire. He prioritised the needs of his brother, whose education he said he wanted to support, over the need to stay crime-free. That risk factor was not controlled through the use of licence or other similar conditions, and, accordingly, it was not the restraining effect of such conditions that led to the report's conclusion as to the appellant's low risk of re-offending. The report observed that the appellant's attitude to his offending may have been changed by his time in custody, for example (para. 12.9).

23. I consider that the judge was entitled to conclude that the appellant had addressed his approach to financial matters, as part of his broader analysis: see paragraph 23. It was open to the judge to attach some weight to the fact that the appellant was not permitted to work and yet had not reoffended. That was a valid factor to take into account, as part of the overall assessment, tempered by the judge's approach to the appellant's protestations of remorse and rehabilitation, as set out below.

24. The judge took full account of the fact the appellant had not been at liberty for long: see paragraph 24. Accordingly, he adjusted the weight to be ascribed to the appellant's claimed rehabilitation on that account. Any significance the judge ascribed to the appellant's offending-free conduct must therefore be viewed in that context. As the judge said, he based his primary assessment on the OASys report's conclusions, having had the benefit of the appellant giving evidence. Weight, of course, is pre-eminently a matter for the judge.

25. In my, the judge was entitled to approach matters in that way. It is clear to the Secretary of State why she lost: the judge found that the appellant had not been shown to represent a genuine, present and sufficiently serious threat affecting

one of the fundamental interests of society. That was a conclusion based on the contents of the OASys report, which concluded that the appellant represented a low risk of reoffending. Contrary to the submissions of Mr Terrell, that did not entail double counting. The judge explained that he attached minimal weight to the appellant's assertions of remorse, and took into account the fact that he had not been at liberty for long at the point he, the judge, reached this assessment. That analysis was entirely open to the judge.

26. In conclusion, I find that the judge performed an evaluative assessment of the appellant's risk profile and reached a conclusion that did not entail some identifiable flaw, lack of consistency, failure to take account of some material factor, or involve some other identifiable flaw. The reasons for the judge's decision are clear from the terms of his reasoning. The conclusion he reached was against the background of the presenting officer's realistic acceptance before the First-Tier Tribunal that the Secretary of State faced difficulties when seeking to demonstrate that the appellant's risk profile was such that the test for deportation under the 2016 Regulations was met (see paragraph 13).

27. The grounds should make other criticisms of the judge's decision. These were not pursued by Mr Terrell, for good reason. I can deal with them briefly.

28. First, contrary to the assertion in the grounds, it is clear that the judge was fully aware of the seriousness of the appellant's offence, as demonstrated by its circumstances, and the length of the sentence. See paragraph 12 of the judge's decision, where he referred to paragraphs 25 to 36 of the Secretary of State's decision to deport the appellant. It was not necessary for the judge to repeat the contents of those paragraphs back to the parties. He was plainly fully aware of them.

29. Secondly, and again contrary to what the grounds contend, the judge did address paragraph 7 of Schedule 1 to the 2016 Regulations: see paragraph 11. The judge also quoted the relevant provisions at paragraph 9. He plainly had the provisions firmly in mind. Nothing in those provisions demonstrated that this appellant posed a risk of reoffending that was contrary to the judge's assessment.

30. In conclusion, the grounds of appeal do not demonstrate that the decision of the judge involved the making of an error of law. They are a series of disagreements of fact and weight that do not disclose an error of law.

31. This appeal is dismissed.

Notice of Decision

The appeal is dismissed.

The decision of the First-tier Tribunal did not involve the making of an error of law such that it must be set aside.

Stephen H Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

2 December 2024