IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-005251

First-tier Tribunal No: DA/00044/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 06 February 2025

Before

UPPER TRIBUNAL JUDGE O'BRIEN
DEPUTY UPPER TRIBUNAL JUDGE RHYS-DAVIES

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

PEDRO ALESSANDRO DALEFFE

Respondent

Representation:
For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer
For the Respondent: In person

Heard at Field House on 17 January 2025

DECISION AND REASONS

1. For the sake of convenience, we shall refer to the parties as they were in the First-tier Tribunal.

2. The appellant is a national of Italy born on 9 February 1977. The respondent appeals, with the permission of First-tier Tribunal Judge Lester, against the decision of First-tier Tribunal Judge Gibbs ('the judge'), following a hearing at Hatton Cross on 23 September 2024, to allow the appellant's appeal against the respondent's decision on 10 April 2024 to deport him in accordance with Regulation 27 of the Immigration (European Economic Area) Regulations 2016 ("the 2016 Regulations").

The Grounds of Appeal

3. The grounds assert that the judge erred as follows: it was not open to the judge to find that the appellant was sufficiently integrated into the United Kingdom in order to require the respondent to show imperative grounds for his deportation;

the judge failed to give adequate reasons for not taking into account the appellant's conviction in Brazil; and, the judge failed to consider the seriousness of the consequences of reoffending when concluding that the appellant's deportation was not justified on serious grounds of public policy. Permission was given on all three grounds.

4. Before coming off the record, the appellant's former solicitors submitted a rule 24 response. In short, they submitted that the judge directed herself correctly. It was unnecessary to consider integration in the absence of any custodial sentence. The conviction in Brazil was incapable of engaging imperative grounds. Neither would any residual risk of reoffending reach that standard.

The Submissions

5. Mr Tufan confirmed that there was no challenge to the appellant having resided in the United Kingdom in accordance with the 2016 Regulations for 10 years. Instead, he submitted that the appellant nevertheless had to demonstrate integration, and that it had not been open to the judge to find in his favour on the point given the appellant's offending history. Whilst the judge had directed herself to Hafeez v SSHD [2020] EWCA Civ 406, she had failed to apply the case correctly. The judge gave unreasonably inadequate weight to the appellant's conviction in Brazil. The judge failed to take into account the appellant's propensity to offend when assessing justification of deportation.

The Law

6. The rights of free movement across the European Union of its citizens (and others to ensure that that right can be enjoyed effectively) are governed by Directive 2004/38/EC of the European Parliament and of the Council of 29th April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the member States ('the Citizens' Rights Directive'). The 2016 Regulations implemented the Citizens' Rights Directive in the United Kingdom, replacing the earlier 2006 EEA Regulations and giving effect to subsequent rulings of the Court of Justice of the European Union.

7. The 2016 Regulations were revoked on 31 December 2020 upon expiry of the transition period following the United Kingdom's exit from the European Union. Nevertheless, it is not in issue that the respondent's decision was taken on the basis of offending which pre-dated the end of the transition period in respect of an EEA national who had an extant valid application for limited leave to remain under the European Union Settlement Scheme (EUSS) and that the decision therefore had to be (and indeed was) taken in accordance with the provisions of the 2016 regulations.

8. Pursuant to regulation 23(6)(b) of the 2016 Regulations, an EEA national who has entered the United Kingdom or the family member of such a national who has entered the United Kingdom may be removed if the Secretary of State has decided that the person's removal is justified on grounds of public policy, public security or public health in accordance with regulation 27.

9. Regulations 27(3) and (4) of the 2016 regulations provide:

> '(3) A relevant decision may not be taken in respect of a person with a right of permanent residence under regulation 15 except on serious grounds of public policy and public security.
> (4) A relevant decision may not be taken except on imperative grounds of public security in respect of an EEA national who—

> (a) has a right of permanent residence under regulation 15 and who has resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision; or
> (b) is under the age of 18, unless the relevant decision is in the best interests of the person concerned, as provided for in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 19892.'

10. Article 28 of the Citizens' Rights Directive ('Protection from Expulsion') provides:

> '1. Before taking an expulsion decision on grounds of public policy or public security, the host Member State shall take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host Member State and the extent of his/her links with the country of origin.
>
> 2. The host Member State may not take an expulsion decision against Union citizens or their family members, irrespective of nationality, who have the right of permanent residence on its territory, except on serious grounds of public policy or public security.
>
> 3. An expulsion decision may not be taken against Union citizens, except if the decision is based on imperative grounds of public security, as defined by Member States, if they:
>
> (a) have resided in the host Member State for the previous ten years; or
>
> (b) are a minor, except if the expulsion is necessary for the best interests of the child, as provided for in the United Nations Convention on the Rights of the Child of 20 November 1989.'

Conclusions

11. In respect of whether the provisions of regulation 27(4) applied to the appellant, the judge said as follows:

> '8. The respondent's decision letter accepts that the appellant has, based on HMRC records, been regularly employed in the UK from June 2014 to present. Further, the respondent accepts that there "is evidence to suggest that you have resided for in the UK for at least 10 years." It does not therefore appear that the appellant's length of residence is in question, what is disputed by the respondent is whether he is integrated.
>
> 9. However, whether this is the correct approach is in my view arguable. The appellant has never received a custodial sentence in the UK and in Hafeez v Secretary of State for the Home Department [2020] EWCA Civ 406 the Court of Appeal only referred to the need to show integration in respect of those who had been in custody:
>
> > "43... an individual relying on imperative grounds protection who has served time in custody must prove both that he has 10 years continuous (or non continuous) residence ending with the date of the decision on a mathematical basis and that he was sufficiently integrated within the host state during that 10 year..."
>
> 10. In any event for the sake of completeness I make the following findings...'

12. The 10-year period of continuous residence prescribed in regulation 27(4) is not qualified by a requirement that the individual concerned is integrated into the United Kingdom. Indeed, it is clear from Article 28 of the Citizens Rights Directive

that, even taking into account those matters identified in paragraph 1 (including the extent of integration into the host state of the individual concerned), an individual may not be expelled if they have a right of permanent residence and have resided in the host state for 10 continuous years.

13. Nothing in Hafeez (nor any of the other authorities concerning regulation 27(4), such as SSHD v Viscu [2019] EWCA Civ 1052 and SSHD v AA [202024] EWCA Civ 18) hold otherwise. On the contrary, those authorities all concern situations where the period of residence relied upon includes periods of imprisonment. We were not taken by Mr Tufan to any other authority, on point or otherwise.

14. It is possible, in our judgment, to summarise the law regarding the proper application of regulation 27(4) thus. The individual must in all cases establish a right of permanent residence and 10 years' continuous residence in the United Kingdom counting back from the date of the deportation decision. Periods of imprisonment do not count towards, but similarly do not interrupt, continuous residence in the United Kingdom. However, where the period relied upon spans or otherwise includes a period of imprisonment, the individual concerned must show that he is sufficiently integrated into the United Kingdom to benefit from imperative grounds protection. Nevertheless, where an individual can show 10 years' strictly continuous residence to the date of the challenged decision (that is to say uninterrupted by periods of imprisonment, or otherwise), he is entitled to that protection without having to demonstrate any such integration. In effect, the necessary degree of integration is irrebuttably presumed.

15. Consequently, we find that the judge was entitled to conclude at [13] that the appellant benefitted from imperative grounds protection, and also that she was entitled to find (as she implicitly did at [9-10]) that that was the case irrespective of any evidence of his integration. It follows that ground 1 fails.

Ground 2

16. The grounds assert that the judge failed to give adequate reasons for not taking the appellant's conviction in Brazil into account, and submit that the mere fact that the appellant was convicted in his absence did not mean that the conviction should be disregarded.

17. The judge said the following at [13] about the conviction in question (before concluding at [14] that she did not have any evidence before her to suggest there were imperative grounds of public security requiring the appellant's deportation):

> "Although I [sic] he has been convicted of robbery with a firearm in Brazil (in 2010) this was in his absence. Further, and in any event he has not been involved in any similar criminality whilst in the UK and this conviction is fourteen years old."

18. It is clear that the judge did take the conviction into account. Moreover, it is clear from the latter sentence in that paragraph that her conclusion that it did not constitute or contribute to imperative grounds was reached not only because it has a conviction in absence but also because of the passage of time and the absence of any similar conduct.

19. Consequently, ground 2 as pleaded fails. In any event, and if the respondent intended to assert to the contrary, the judge's approach to the Brazil conviction was unarguably permissible, given in particular the passage of time and the absence of any similar conduct, notwithstanding the nature of the conviction.

Ground 3

20. It is alleged that the judge failed to take into account the likelihood and consequences of reoffending when assessing whether serious grounds of public policy to justify deportation were made out. Given our findings on ground 1, that the judge correctly applied the imperative grounds test, this ground as pleaded must fail as disclosing at best an immaterial error.

21. In any event, the judge considered the nature and chronology of the appellant's offending. As noted above, she took into account the passage of time since, and absence of conduct similar to, the Brazil conviction. As for the offences committed in the United Kingdom, the judge lists them at [10]:

> "2013 – possession of cannabis (x2), breach of a conditional discharge, using a vehicle whilst uninsured; conditional discharge and fine, driving penalty
>
> 2022 – possession of cannabis and amphetamine, breach of a non-molestation order (x2); community order
>
> 2023 – "drug driving" (x4); fine, disqualified from driving"

22. The judge describes that offending in [10] as 'sporadic and low level' and again at [14] as 'low level'. This categorisation is not challenged in itself as an error of law, and was certainly one rationally open to the judge. The judge is silent on the likelihood of reoffending; however, none of the United Kingdom offences resulted in a custodial sentence. It is simply unarguable that the judge could have found the appellant's offending, even assuming a likelihood of low level reoffending (which was, at most, what could have been found from the evidence), to meet the 'serious grounds' test.

23. We note that it is not argued that the facts as found meet the imperative grounds test, and would have had no hesitation in rejecting any argument that the judge was not entitled to find that they fell short.

Notice of Decision

1. The judge's decision did not involve the making of an error of law.

2. The judge's decision stands and this appeal is dismissed.

Sean O'Brien

Judge of the Upper Tribunal
Immigration and Asylum Chamber

3 February 2025