Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: DA/00152/2018**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 26 June 2019	**On 04 July 2019**

Before

THE RIGHT HONOURABLE LORD BOYD OF DUNCANSBY
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE PICKUP

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AHMED ABUKAR
(ANONYMITY DIRECTION NOT MADE)

Claimant

Representation:

For the Appellant: Mr E Tufan, Home Office Presenting Officer
For the Claimant: Mr P Georget, Counsel, instructed by Portway Solicitors

DECISION AND REASONS

This is the Secretary of State's appeal against the decision of First-tier Tribunal Judge Beach promulgated on 23 April 2019 allowing the claimant's appeal against the decision of the Secretary of State to deport him, dated 6 December 2017, under the Immigration (EEA) Regulations 2016.

First-tier Tribunal Judge Saffer granted permission to appeal on 16 May 2019 on the basis that it was arguable that the judge materially erred regarding the

public interest assessment of removing an EEA national with the lowest level of protected rights given the offending background. All grounds were allowed to be argued.

We have received the Rule 24 response from the claimant dated 14 June 2019 and the Secretary of State's skeleton argument of 14 June 2019, which we have read and considered in addition to the submissions from the two representatives.

The claimant first came to the United Kingdom aged 14 in 2003. Thereafter, he accumulated some nine criminal convictions for relatively minor offences committed between 2008 and April 2017, one of which resulted in a custodial sentence. However, ultimately he was arrested and prosecuted for possession with intent to supply class A crack cocaine and heroin, to which he pleaded guilty, and in due course received sixteen months' imprisonment, his first custodial sentence. Thereafter followed the stage 1 deport decision of 13 November 2017 and the following month, on 6 December, the deportation decision and order, made and certified under Regulation 33. He was in fact removed from the United Kingdom in February 2018 before his appeal was lodged but was allowed to return for the appeal hearing. We understand that he is now back in the Netherlands.

The grounds of application submit that there was a material misdirection in law, that the judge failed to adequately assess the risk of further offending and the seriousness of his previous offences. It is also said that the judge failed to resolve a discrepancy in the risk offending between an OASys Report and a PSR report. It is suggested that the offending history showed a series of escalating offences and it was pointed out that the claimant's wife and child did not prevent him from committing further offences.

In the assessment of the decision of the First-tier Tribunal, we note that not only does the decision of the Secretary of State have to be justified on grounds of public policy, public security or public health but it must be proportionate, and the claimant's personal conduct must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society by reference to factors set out in Schedule 1 of the Regulations. That last consideration, the fundamental interests of society, has been described in Mr Tufan's submissions as the public interest.

Mr Tufan placed emphasis on consideration of Schedule 1, in particular paragraphs 7(f), (g) and (h), which he submitted were not adequately addressed in the decision, if at all. It is also suggested that when observing that the claimant had not offended since the index offence the judge failed to recognise that he could not do so because following the completion of his criminal sentence he remained in immigration detention, until he was removed from the UK to the Netherlands.

Having carefully considered both the submissions made to us and the evidence placed before the judge, we have concluded that there was no material error of law in the decision of the First-tier Tribunal. We are satisfied that the

conclusions on the relevant issues were open to the judge on the evidence and for which cogent reasons were provided.

Contrary to the argument advanced by the Secretary of State, the judge did not choose one risk assessment over the other but very properly (at paragraph 64) considered both assessments as part of the overall information available to her. The judge bemoaned the lack of a more recent assessment but she could only work with the materials put before her. It is clear from paragraph 64 that she had taken account of both the two risk assessments when assessing whether the claimant is a genuine, present and sufficiently serious threat. Further, it is worth noting that the OASys assessment indicated that the claimant was then at a medium risk of reoffending over a period of two years from the date of that report. Obviously, those two years have now elapsed. The earlier PSR report, prepared for his sentencing, assessed him at low risk of reoffending. The judge was not required to choose between one or the other, or to reconcile one with the other as has been submitted. We accept Mr Georget's submission that the judge's task was to make her own assessment of the risk of reoffending in consideration of all relevant factors.

Contrary to the submissions on behalf of the Secretary of State, we are satisfied that the judge did adequately address the relevant factors of Schedule 1. The matters considered are clearly set out in the decision and whilst the judge did not specifically mention paragraphs 7(f), (g) or (h), we are satisfied that she properly considered the key relevant criteria between paragraphs 62 and 67 of the decision, and did so in a carefully structured way so that the absence of reference to 7(f), (g) or (h) makes no material difference to the outcome of the appeal. In particular, we are satisfied that the judge adequately assessed the key issue, the risk that the claimant presented for committing further offences. It is clear that the judge adopted a balanced approach. She took into account his string of previous offences and, at paragraph 62, made a number of findings that were unfavourable to him, including commenting on his unwillingness to accept responsibility for his behaviour. However, it was not wrong for the judge to observe that the index offence was his first custodial sentence and that the sentence had been reduced for both his guilty plea and for being his first offence, to a total of sixteen months' imprisonment, a relatively low sentence for drug dealing offences.

She also took account of the claimant's evidence and that of his wife and the documentary evidence before her as well as other factors that are set out in Schedule 1 of the EEA Regulations. In particular, the judge considered the history showed a propensity to offend. However, the judge also found that the claimant had shown some understanding of the effect of his behaviour, had expressed remorse, noted that he is complying with the requirements of the shelter where he is living in the Netherlands, and that has not committed further offences, as far as one knows. In regard to this last point, Mr Tufan pointed out that the claimant could not have committed any offences because he was in immigration detention before being removed and then removed to the Netherlands. However, the fact remains that the claimant has essentially lived an ordered life since the index offence, which was sometime back in 2016. Matters have moved on and his life is measurably different now than it was then.

All in all, we are satisfied that the judge took all relevant factors into consideration. On the claimant's history, one might describe the decision to allow the appeal as perhaps a generous one but we cannot say that it was in any way irrational, perverse or unreasonable. A different judge may have reached a different conclusion but that is not to say that there is anything that amounts to an error of law in this decision. We are satisfied that the findings were open to the judge on the evidence and find that cogent reasoning has been given for those findings. Having carefully considered the submissions from both parties, we are satisfied that the judge was entitled to reach the conclusion that the claimant was not now a genuine, present and sufficiently serious threat to public policy, public security or public health and, ultimately, that in the light of all the circumstances the decision was not proportionate.

In the circumstances, the Secretary of State's appeal must fail.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such as to require the decision to be set aside.

We do not set aside the decision.

The decision of the First-tier Tribunal stands and the claimant's appeal remains allowed in accordance with the decision of Judge Beach.

No anonymity direction is made.

Signed

Upper Tribunal Judge Pickup

Dated 26 June 2019