Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00180/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 30th January 2019	**On 7th February 2019**

Before

LORD BECKETT
SITTING AS AN UPPER TRIBUNAL JUDGE
UPPER TRIBUNAL JUDGE COKER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

ERIC (aka JAYJAY) GNAKPA

Respondent

Representation:
For the Appellant: Mr I Jarvis, Senior Home Office Presenting Officer
For the Respondent: Mr A Burrett instructed by Turpin and Miller LLP

DETERMINATION AND REASONS

1. Mr Gnapka, a French national date of birth 23rd September 1992, was served with a decision to deport on 9th January 2018 following his conviction on 24th January 2017 of 2 counts of assault occasioning actual bodily harm and assault by beating for which he received 2 years imprisonment.

2. Between 17th January 2014 and 10 February, he received a conviction for three offences against the person. He is also subject to a restraining order for five years expiring on 23rd January 2022.

3. Mr Gnapka's appeal against the decision was allowed by First-tier Tribunal judge Rowlands for reasons set out in a decision promulgated on 2nd August 2018.

4. The Secretary of State sought and was granted permission to appeal on the grounds, essentially, that the First-tier Tribunal judge had failed to take relevant evidence into account, failed to give adequate reasons for the finding that Mr Gnapka did not represent a serious threat to public policy and security, and that the assessment of future risk in determining proportionality was in error.

Mr Gnapka's immigration and criminal history.

5. Mr Gnapka claims to have been resident since 2006. Although his actual date of entry is not acknowledged by the SSHD, the SSHD accepts that Mr Gnapka has permanent residence and has therefore acquired the 'second-level' of protection from expulsion, namely serious grounds of public policy or security are required.

6. Mr Gnapka has three children who live with his ex-partner and her three children from an earlier relationship. He claims to be reconciled with her and to see his children.

7. According to this witness statement, after separating from the mother of his children, his new partner was jealous of his relationship with his children and this led to him losing control of his emotions and assaulting her.

8. In January 2014 he was convicted of three separate assaults on the mother of his children involving slapping, knocking her to the floor and punching her; he received a community order sentence.

9. On 24th January 2017, he was sentenced to serious offences against a new partner: in September 2016 an assault with a wooden stick against her right thigh, knocking her down, pulling her up and assaulting her again; in October 2016 punching her in the face; in November 2016 kicking her on the ankle and shin. He received a total sentence of 24 months imprisonment, taking full account of his guilty plea. Two other counts (to which he has pleaded not guilty) remain on file

10. The sentencing judge said that he took the view that the first offence

> "was an extremely serious offence committed only a couple of years after the magistrates had given you a chance, the previous, less serious, but similar offending" ([sic])

11. The judge went on to say

> "…It is quite plain that you must not have any further contact with … in any way at all. And you must not go to her address or within 200m of her. And it

seems to me that she should be subjected to the protection of that court order for the next five years..”

Error of law

12. The First-tier Tribunal judge incorporated Mr Gnapka’s witness statement into his decision and set out the cross examination. The judge did not make findings on all the assertions in that witness statement, including that Mr Gnapka is now reconciled with the mother of his children (his first victim) or that he sees them.

13. The First-tier Tribunal judge found:

- He first had to consider the principles in regulation 21(5) of the 2006 EEA Regulations.
- The previous assault matters, although of similar nature, did not make him a prolific offender.
- Mr Gnapka had shown “quite strong social and cultural integration into the United Kingdom”.
- “he is clearly not somebody who I would consider to be a persistent and regular offender”
- “his deportation would not need to be in the best interests of the United Kingdom and that the fact that he is totally integrated into society here” [sic]
- “he does not represent a proportionate and sufficiently serious threat to the public in the United Kingdom”.

14. The judge said [16] that there was no need to consider right to family or private life because of his decision that deportation would not be in accordance with the Regulations but that if he had to he “would have found that his deportation would not be proportionate and would amount to an unlawful interference with his family life”.

15. Evidence that was before the First-tier Tribunal judge but which the judge has not taken account of in reaching his decision included:

- There is a restraining order that does not expire until 23rd January 2022;
- That the sentencing judge described the offences against the two women as being of similar nature and the later offences as being extremely serious.
- The OASYS Report states that Mr Gnapka is not able to manage his emotions appropriately, which led to violence for which he partially blames his victim.

16. The First-tier Tribunal judge considered the appeal under regulation 21(5) of the 2006 Regulations, not regulation 27 and Schedule 1 of the 2016 Regulations. The First-tier Tribunal judge failed to identify, on the basis of the evidence before him, whether there were serious grounds of public policy and security for the making of the decision; he moved straight to considering the proportionality of the decision. The judge failed to take into account the restraining order, the OASYs report, the nature and similarity of the offending behaviour against each victim as referred to by the sentencing judge, the steps taken by him to address his behaviour and whether he expressed remorse or rehabilitation. There was no finding in connection with the contact he has with his children, if any. There was no reasoned finding why he could be considered to be socially and culturally integrated into UK society in the context of the evidence before the judge and the offences he has committed against two partners. Although obiter, he gives no adequate reasons, for finding that Mr Gnapka's deportation would be a disproportionate interference with his family and private life given that there are no findings as to his family life.

17. The judge has failed to address the evidence before him in reaching his decision; his reasons for reaching the conclusions he did are lacking in substance and, because of the failure to identify and take account of relevant evidence, lacking in adequacy.

18. The judge has erred in law such that the decision is set aside to be remade.

19. In this case, Mr Gnapka's evidence has not resulted in findings being made that would enable a sustainable decision to be made. It is not the role of the Upper Tribunal to make primary findings of fact, which will be required in this appeal. For these reasons we remit the appeal to be heard afresh, no findings – such as they are – retained.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

We set aside the decision and remit the appeal to be heard afresh; no findings preserved.

Date 1st February 2019

Upper Tribunal Judge Coker