



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: DA/00023/2019

THE IMMIGRATION ACTS

**Heard at the Royal Courts of Decision & Reasons Promulgated
Justice
On 24 February 2020** **On 12 March 2020**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant/Respondent

and

**MAHAMUD SINAG ISMAIL
(ANONYMITY DIRECTION NOT MADE)**

Respondent/Appellant

Representation:

For the Appellant (Respondent before this Tribunal): No representation
For the Respondent (Appellant before this Tribunal): Mr. P Singh, Senior
Presenting Officer

DECISION AND REASONS

Introduction

1. This is the Secretary of State's appeal against the decision of Judge of the First-tier Tribunal Seelhoff ('the Judge') promulgated on 28 July 2019 in which he allowed an appeal against the respondent's decision to deport the

appellant under the Immigration (European Economic Area) Regulations 2016 ('the 2016 Regulations'). The decision is dated 4 January 2019.

2. The parties are referred to in this decision as they appeared before the First-tier Tribunal.
3. Judge of the First-tier Tribunal Bristow granted permission to appeal on all grounds advanced by the respondent.

Anonymity

4. The Judge did not issue an anonymity direction and the parties did not request that I make one.

Background

5. The appellant is a Norwegian citizen and is aged 23. He is of Somali heritage. His mother was recognised as an asylum seeker by the Norwegian authorities and became a Norwegian citizen in 1996. The family moved to the United Kingdom in 2002, when the appellant was aged 5/6 and his entire education was undertaken in this country.
6. The appellant was given a caution in 2012 for possessing cannabis. He received a suspended 8-week custodial sentence in August 2015 for possessing an offensive weapon in a public place, a knife, and for possessing cannabis.
7. On 19 October 2016, at Isleworth Crown Court, he pleaded guilty to wounding/inflicting grievous bodily harm, contrary to section 20 of the Offences against the Person Act 1861 and to having a bladed article in a public place, contrary to section 139 of the Criminal Justice Act 1988. On 27 March 2017, the appellant was sentenced by HHJ Johnson to two years imprisonment for the GBH offence, and to 12 months concurrent for the bladed article offence. In his sentencing remarks, HHJ Johnson observed, *inter alia*:

'Stabbing someone in the neck is an extremely dangerous part of the body to attack. There may have been some provocation, but the pictures show that a member of the public stood between the two of you and you had ample opportunity to withdraw. Not content, you went back to the car, you armed yourself, and you delivered a blow which caused a cut to his ear and a nasty cut to his neck, behind his ear, as I said, a very vulnerable part of the body. That fact that you had a weapon with you of course makes that, together with the injury, a category 1 offence ... You have a propensity to carry knives, and you had a knife on you that night, and when you perceived yourself to be provoked, you used that knife in a wicked way.'

8. By her decision to deport dated 4 January 2019 the respondent concluded that the appellant posed a genuine, present and sufficiently serious threat to one of the fundamental interests of United Kingdom society and she

considered that the appellant's deportation was justified on ground of public policy, public security or public health in accordance with regulation 23(6)(b) of the 2016 Regulations.

Decision of the First-tier Tribunal

9. The Judge found that the appellant's mother had not consistently exercised EEA Treaty rights between 2002 and 2010, save for a year working as a carer. She studied thereafter for a period of time but did not possess comprehensive sickness insurance. She commenced full-time employment as a carer in 2014/2015. Though the appellant remained dependent on his mother after he turned 18, his mother exercised Treaty rights for less than 5 years before his conviction and imprisonment in 2017. The Judge determined that the appellant was not entitled to higher levels of protection against expulsion and this finding was not challenged by the appellant.
10. The Judge found that the appellant did not pose a genuine, present and sufficiently serious threat to society. When considering the proportionality of the proposed removal, the Judge found that the appellant had undergone significant rehabilitation and had been out of trouble for approaching two years.

Decision

11. Mr. Singh was candid in acknowledging the respondent's difficulty arising from the grounds of appeal advanced. The grounds run to sixteen paragraphs, though many are discursive in nature or simply set out facts arising in the appeal. In granting permission to appeal, JFtT Bristow primarily focused upon the challenge to the Judge's finding that the appellant remained dependent on his mother.
12. Being mindful of the recent reported decision of *OK (PTA; alternative findings) Ukraine* [2020] UKUT 00044 (IAC), confirming that permission to appeal should not be granted on the grounds as pleaded if there is, quite apart from the grounds, a reason why the appeal would fail, Mr. Singh acknowledged that the respondent had not expressly challenged the Judge's finding that the appellant did not pose a genuine, present and sufficiently serious threat to society. Rather, the grounds focus upon the Judge's assessment of proportionality, both as to his dependency upon his family and his integration into British society. He further accepted that a reference within the grounds to the appellant having a propensity to carry knives flowed from the challenge to proportionality and was not a challenge to the Judge's finding as to genuine, present and sufficiently serious risk.
13. Mr. Singh accepted that a finding as to whether the conduct of the appellant represents a genuine, present and sufficiently serious threat is a prerequisite for the adoption of an expulsion measure and it is only upon such a threat being established that the issue of proportionality arises.

14. Consequent to Mr. Singh's acceptance that there was no challenge to the Judge's finding that the appellant does not represent a genuine, present and sufficiently serious threat I dismissed the respondent's appeal at the conclusion of the hearing.
15. It is appropriate to observe that the appellant confirmed at the hearing that he has recently been convicted on one count of aggravated burglary following a Crown Court trial. He is due to be sentenced later in March 2020 and expects a custodial sentence. From the information provided orally by the appellant at the hearing, the offence and his subsequent arrest occurred a short while after the Judge's decision was promulgated and so does not fall to be considered at the error of law hearing. The appellant indicated his awareness that his recent conviction is likely to result in the respondent seeking to renew efforts to deport him.

Notice of Decision

16. The decision of the First-tier Tribunal did not involve the making of an error on a point of law.
17. The Secretary of State's appeal is dismissed.

Signed: **D O'Callaghan**
Upper Tribunal Judge O'Callaghan
Date: 2 March 2020