



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

Appeal Number: DA/00109/2020

THE IMMIGRATION ACTS

**Heard at Field House
On 25 January 2022**

**Decision & Reasons Promulgated
On 08 February 2022**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ABDUL FATTAH DAVIES
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Kotas, Home Office Presenting Officer

For the Respondent: No appearance

This has been a hybrid hearing which has been consented to by the parties. The form of remote hearing was video by Microsoft Teams. The documents referred to are in the bundles on the court file, the contents of which I have recorded. The order made is described at the end of these reasons.

Although this is an appeal by the Secretary of State, I shall refer to the parties as in the First-tier Tribunal.

DECISION AND REASONS

1. The appellant is a citizen of Denmark born on 14 August 1998. His appeal against deportation was allowed by First-tier Tribunal Judge Plowright [the judge] on 14 April 2021 under the Immigration (EEA) Regulations 2016.

2. The Secretary of State appealed on the grounds the decision was inadequately reasoned. There was no challenge to the judge's finding that the appellant has established permanent residence. The grounds submit the judge's findings on rehabilitation at [68] were incomplete and the judge failed to make a clear finding. It is further submitted the proportionality assessment at [73] lacks reasoning and the judge failed to consider regulation 27(6). It is argued there was no balancing exercise and it remains unclear why it would be disproportionate for the appellant to return to Denmark. There was no evidence or suggestion that the appellant's two year old child would suffer. The respondent submits there are sufficiently serious grounds to deport the appellant in accordance with regulation 27(3) and inadequate reasons have been given for allowing the appeal. Permission to appeal was granted by Upper Tribunal Judge Gleeson on 11 June 2021 on the basis the grounds were arguable.
3. Notice of appeal and invitations to attend the appeal hearing by Microsoft Teams were sent to the appellant, his representatives and the respondent on 16 December 2021. At 10am on 24 January 2022, the appellant's representative emailed the Tribunal to say they were not longer acting. There was no correspondence from the appellant to explain why he did not attend the hearing in person or remotely. The Tribunal called the appellant on the number given by his representatives and left a message asking him to contact the Tribunal. The appellant has not contacted the Tribunal by the time this decision was written.
4. Mr Kotas attended court and therefore the hearing was conducted face-to-face. Given that this was an appeal by the respondent and, in my view on the face of the grounds drafted by the Secretary of State no error of law was identified, I proceeded in the appellant's absence and heard Mr Kotas's submissions. I was particularly concerned to hear what material matters the judge had failed to take into account and/or further reasons the judge could have given. I was satisfied the appeal could be fairly and justly determined in the appellant's absence.
5. Mr Kotas submitted that this was not just a reasons challenge. The impact of the appellant's deportation on his two-year old son was at the forefront of the judge's mind in assessing proportionality in addition to the appellant's nine-years' residence in the UK. Neither the appellant's separation from his son or his length of residence was sufficient to say his deportation was disproportionate. If that was the case all deportations would be disproportionate. The reasons were manifestly inadequate and did not address the emotional well-being of the appellant's partner or the effect the appellant's separation would have on his son. There were insufficient reasons in favour of the appellant to outweigh the appellant's serious offences and risk to the fundamental interests of society.
6. The judge failed to take into account support from the appellant's mother and sister in the proportionality assessment. What was said at [68] was not carried through into the proportionality assessment and there was no mention about how the appellant would work to support himself or how he could maintain relationships from abroad. This broad evaluation was not

carried out. The appellant's length of residence and separation from his son was the sum total of the proportionality assessment.

7. Mr Kotas also argued that the judge failed to give reasons for why he preferred the evidence of the appellant's mother about the lack of contact with the appellant's sister in Denmark given that this was inconsistent with the OASys report at [59]. Mr Kotas submitted the judge had not resolved this conflict in evidence, although he accepted this was not argued in the written grounds of appeal.
8. Mr Kotas submitted the grounds were not advanced on the basis the judge's findings were perverse because this was a high threshold. The judge was satisfied there were serious grounds, but not satisfied the appellant's deportation was proportionate. Given what the judge took into account in the appellant's favour, there were insufficient reasons given for why he allowed the appeal.

Conclusions and reasons

9. Contrary to the written grounds, the judge properly applied regulation 27(3) and directed himself in accordance with regulation 27(5) and (6) at [63] and [69]. The matters relied on by the judge in [73] demonstrate he has considered the appellant's age, length of residence, family and economic situation, social and cultural integration in the UK and links to Denmark.
10. I am not persuaded by the respondent's submissions that the judge needed to provide further explanation for the effect of the appellant's deportation on his two year old child over and above the separation referred to at [70], [71] and [73]. Nor am I persuaded the judge's findings at [68] were incomplete. The judge found the appellant could support himself in Denmark with support from his mother and sister who visited Denmark regularly. The existence of family members in Denmark was not material to the judge's findings on rehabilitation.
11. I find the judge's conclusion that the appellant's deportation was disproportionate was open to him on the evidence before him and he gave adequate reasons for coming to that conclusion. The judge took into account all relevant matters when considering proportionality and his reasons were sufficient to demonstrate why he allowed the appeal. A different judge may have come to a different conclusion.
12. There was no material error of law in the decision promulgated on 14 April 2021 allowing the appellant's appeal. I dismiss the respondent's appeal.

Notice of decision

Appeal dismissed

J Frances

Signed

Date: 27 January 2022

Upper Tribunal Judge Frances

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. **A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**
6. **The date when the decision is "sent" is that appearing on the covering letter or covering email**