Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers:
UI-2022-000811 (DA/00084/2021)
UI-2022-000812 (EA/13424/2021)

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15 November 2022	**On 31 January 2023**

Before

THE HONOURABLE MRS JUSTICE THORNTON
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE BRUCE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR AIMAN HEURTON
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Ms Willocks-Briscoe, Home Office Presenting Officer
For the Respondent: Mr Ó'Ceallaigh of Counsel

DECISION AND REASONS

Introduction

1. The Secretary of State appeals, with permission, against the decision of the First-tier Tribunal to uphold the appeal of Mr Heurton against the Secretary of State's decision, dated 16 February 2021, to deport him to

France on public policy grounds pursuant to Regulations 23 and 27 of the Immigration (European Economic Area) Regulations 2016 (SI 2016/1052).

2. As well as appealing against the deportation decision Mr Heurton had appealed against the Secretary of State's refusal of his application under the EU settlement scheme for indefinite leave to remain. This refusal was on the basis of the deportation decision and it was common ground before the First-tier Tribunal and remains so before us that the issues in the two appeals overlap. If the appellant succeeds in his appeal against the deportation decision then he will necessarily succeed in his appeal against the EU settlement scheme refusal.

3. It is also common ground that the EEA Regulations 2016 continue to apply in relation to the deportation decision on the basis that the conduct on which the decision is based arose before 31 December 2020. Accordingly, the focus of this judgment is on the deportation decision and the 2016 Regulations.

4. For ease of reference the parties are referred to in this judgment as they were in the First-tier Tribunal decision, namely, references to the appellant are to Mr Heurton and references to the respondent are to the Secretary of State.

The Legal Framework

5. Regulation 23(6)(b) of the EEA Regulations 2016 empowers the Secretary of State to make a deportation order on the grounds set out in Regulation 27.

6. Regulation 27 provides that:

> "(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.
>
> …
>
> (5) The public policy and public security requirements of the United Kingdom include restricting rights otherwise conferred by these Regulations in order to protect the fundamental interests of society, and where a relevant decision is taken on grounds of public policy or public security it must also be taken in accordance with the following principles—
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> (a) the decision must comply with the principle of proportionality;
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> (b) the decision must be based exclusively on the personal conduct of the person concerned;
>
> (c) the personal conduct of the person must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, taking into account past conduct of the person and that the threat does not need to be imminent;

(d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;

(e) a person's previous criminal convictions do not in themselves justify the decision;

(f) the decision may be taken on preventative grounds, even in the absence of a previous criminal conviction, provided the grounds are specific to the person."

(6) Before taking a relevant decision on the grounds of public policy and public security in relation to a person ("P") who is resident in the United Kingdom, the decision maker must take account of considerations such as the age, state of health, family and economic situation of P, P's length of residence in the United Kingdom, P's social and cultural integration into the United Kingdom and the extent of P's links with P's country of origin.

...

(8) A court or Tribunal considering whether the requirements of this regulation are met must (in particular) have regard to the considerations contained in Schedule 1 (considerations of public policy, public security and the fundamental interests of society etc.).

7. Schedule 1 to the Regulations sets out considerations of public policy and public security and provides a non-exhaustive list of the fundamental interests to society in the UK.

Background

8. The appellant is a 19-year-old French national. He entered the UK with his parents in May 2012 and it is accepted by the respondent that he has acquired permanent residence in accordance with the EEA Regulations. He has accrued a number of convictions in the UK including in relation to threatening behaviour, sexual assault. Most recently, for offending in 2019, he was sentenced in November 2020 to a sentence of 27 months in respect of possession of class A drugs with intent to supply and a concurrent sentence of 30 months in respect of two offences of robbery.

The deportation decision

9. The Secretary of State's decision is said to be based on the appellant's convictions for a number of offences; the continued nature of the offending which includes sexual assault, assaulting a constable and possession with intent to supply class A drugs, which is said to show "a flagrant disregard for UK laws and in the absence of public order public spaces become unsafe". The offences are also said to cause the most harm namely involving violence, weapons and drugs. The decision goes on to address the harm caused by class A drugs and observes:

> "it is clear from the judge's sentencing remarks you gave little thought to the consequences of your actions. You were honest with the officer that you have been dealing in drugs since you were 15 for financial gain".

The letter concludes that:

> "due to the very serious nature of the offences which you committed it is considered that you pose a real risk of harm to the public. All the available evidence indicates you have a propensity to reoffend and that you represent a genuine, present and sufficiently serious threat to the public to justify your deportation on the grounds of public policy."

The decision of the First Tier Tribunal

10. The First-tier Tribunal Judge identified the issues as follows:

    i. whether the appellant poses a significantly serious, genuine and present threat which is to be assessed against the serious grounds test;

    ii. whether the appellant's deportation is proportionate including in respect of the relative prospects of rehabilitation in the UK and in France; and

    iii. whether the EU settlement scheme refusal breaches the EU settlement scheme Rules and all of the appellant's rights under the Withdrawal Agreement which overlaps with the issues in the deportation appeal.

11. The FtT Judge concluded as follows in relation to the threat posed by the appellant:

> "47. I do not find that the appellant poses a sufficiently serious present and genuine threat on serious grounds of public policy. I acknowledge at the outset that the appellant's offending is very serious. In that respect I note his candid disclosure for the purposes of pre-sentence reports that he became involved in Class A drug dealing from the age of 15. That is of obvious great concern. The offences of robbery are plainly very serious, not least because one of them involved the use of a knife to enforce the threat. I also note that the offences constitute escalation in the appellant's pattern of offending. Finally, I have in mind that the appellant has been adjudicated in prison in respect of instances of fighting and also of possession of a mobile phone. On balance, however, notwithstanding this conduct, I find that the necessary test is not met. In this respect I make the following observations.
>
> (i) I accept that the appellant has given credible evidence as to being remorseful about his behaviour. I note that the sentencing judge detected some remorse albeit it appeared to be perhaps not as expressed as fully as one might wish it to be in the sense that it appears to have included regret as

to the effect on himself as well as the offending itself. However, one has to bear in mind that he was only 17 and 18 when going through the sentencing process. One cannot necessarily reasonably expect an immature individual to express remorse in the way that one might expect from a mature adult. I attach weight to his expressed remorse and I did not detect any sign in his oral evidence that this is not genuine. I also note that it is supported by his mother whose evidence I found to be credible and who indicated that he had learned a hard lesson from the prison sentence.

(ii) I accept that the appellant has, to a reasonably significant degree, reflected upon his behaviour and I accept that he has distanced himself from the peer group with whom he was involved in the offending. This is an important element in his being able to remain offence free going forward. Allied to this is the clear sense which came from his evidence as to the significant impact this prison sentence has had on him in terms of realising the loss of his family support. I find this to be genuine and significant.

(iii) I find that the appellant is reasonably open in respect of his wrongdoing and this was identified as a positive feature by the sentencing judge who referred to his honest disclosure as to when he began being involved in drugs. I find that this openness was also reflected in his oral evidence and, again, has been corroborated by his mother's evidence who indicated that she had spoken to him a lot during his incarceration. This openness bodes well going forward both in terms of his willingness to seek support and help from his family and also from those who will have responsibility for his supervision. This is a further protective factor.

(iv) In respect of the adjudications in prison, while they are of concern there is no evidence that they have involved any aggravating features (for instance the use of a weapon) and one has to bear in mind a certain sense of perspective in the inherent difficulties of the prison environment and tensions which can arise. There is no evidence that any injury was caused as a result.

(v) Most importantly, I have regard to the fact that the appellant was still only under 18 at the time of the offences and still remains fairly young. In this respect I note the observations of the Court of Appeal in **R v Lang** [2005] EWCA Crim 2864 ('R v Lang') to the effect that one has to bear in mind that a young person may mature and develop in terms of risk assessment as regards dangerousness. Although that is in the context of the sentencing regime for the purposes of whether someone poses a significant risk of serious harm, the observations are nonetheless of some assistance when it comes to the assessment I have to undertake. This also has to be taken into account as regards the adjudications. I find that there are material signs of emerging maturity now (his openness, his attitude to the offences and the realisation of

the impact of offending on his own life as well) which bode well for the future."

12. Turning then to proportionality the judge concluded as follows:

> "48. In terms of proportionality, I find that there is evidence that the appellant has a supportive family, namely his parents and his siblings, all of whom reside in the UK. On the other hand, he has no real connection with France anymore having left there in 2012 and having only visited once briefly since then. It is of course relevant that he has spent a significant portion of his formative years in the UK. It is true of course that his family support did not appear to have operated on him significantly when he was committing his offences. I bear this in mind. However, there are indications in the evidence, including from the appellant himself, that his parents strongly disapproved of his actions to the extent that they kicked him out of home for a time. On balance and combined with the above factors in terms of his having reflected and being open, I find that his family is prospectively a positive factor (even if they were not sufficiently influential on him at the time of his offending) and that separation from his family would be very significant. There have been reasonably thoroughgoing conversations with the appellant as confirmed by his mother and I am satisfied that he has taken the impact of prison seriously and will be minded to have more regard to his parents' views in the future.
>
> 49. He has lived in the UK for around half of his life which is also in itself significant albeit I acknowledge the latter part of that has been in prison. I find that the relative prospects of rehabilitation in the UK, as compared to in France, favour his remaining in the UK. He would have the support of his family in the UK which is plainly important for a still immature young man and I find that the presence of his family would reinforce the clearly expressed intention on his part to study at university. He would not have these features were he to be removed to France where he would, I find, be without support and that would significantly undermine the prospects of his rehabilitation. In all the circumstances, I find that deportation would be disproportionate."

The Secretary of State's Grounds of Appeal

13. The Secretary of State's overarching ground of appeal is that the judge failed to give adequate reasons for finding that the appellant does not currently pose a genuine, present and sufficiently serious threat to the fundamental interests of society. Within this overarching ground, the grounds also submit that the judge fails to take account of various matters including a failure to consider the seriousness of the consequences of reoffending in accordance with **Kamki [2017] EWCA Civ 1715** and a failure to have adequate regard to the adjudications the appellant received whilst he was in prison. The consistency of the appellant's offending is said to be strongly indicative of a propensity to reoffend and the potential consequences of reoffending are serious. The appellant's state of remorse is said to be no more than a self-serving statement. The appellant is not rehabilitated. The First-tier Tribunal Judge has failed to give adequate

reasons as to why the appellant's family should be able to prevent any reoffending in the future given they have been shown to have been unable to prevent offending in the past. Further there is no evidence that the appellant's rehabilitation may not take place in France.

Discussion

14. It is a well-established aspect of Tribunal law that judicial restraint should be exercised when the reasons that a Tribunal gives for its decision are being examined. The Appellate Court should not assume too readily that the Tribunal misdirected itself just because not every step in its reasoning is fully set out in it, **Jones v First-tier Tribunal [2013] UKSC 19** at paragraph 25. The judge's reasons should be read on the assumption that unless he demonstrated to the contrary the judge knew how to perform his or her functions and which matters should be taken into account. In the Upper Tribunal decision of **Budhathoki [2014] UKUT 00341** the following was said in relation to reasons:

> "14. We are not for a moment suggesting that judgments have to set out the entire interstices of the evidence presented or analyse every nuance between the parties. Far from it. Indeed, we should make it clear that it is generally unnecessary, unhelpful and unhealthy for First-tier Tribunal judgments to seek to rehearse every detail or issue raised in the case. This leads to judgments becoming overly long and confused. Further, it is not a proportionate approach to deciding cases. It is, however, necessary for First-tier Tribunal Judges to identify and resolve the key conflicts in the evidence and explain in clear and brief terms their reasons for preferring one case to the other so that the parties can understand why they have won or lost."

15. Applying these propositions, we are not persuaded that the judge failed to give adequate reasons for his decision. There is no challenge to the judge's direction to himself of the relevant legal tests. The key aspects of the decision are set out at paragraphs 47 to 49. The judge acknowledges at the outset that the offending is in his words "very serious" and notes that it is "of obvious great concern that the appellant became involved in drug dealing from the age of 15". He goes on to refer to the seriousness of the robbery convictions stating "not least because one of them involved the use of a knife". He recognises that the offences constitute an escalation in offending and further he also specifically refers to the prison adjudications. It is apparent to us from his reasons that the judge has fully confronted and addressed the seriousness of the offending. Despite this conduct the judge nonetheless concludes that "on balance however notwithstanding this conduct I find that the necessary test is not met". His reasons for coming to this view were that he accepted the appellant had given credible evidence as to being remorseful about his behaviour which he noted was supported by his mother whose evidence he also found to be credible. Secondly, he found that the appellant had reflected upon his behaviour and distanced himself from the peer group and that prison had had a significant impact on the appellant which he considered genuine and significant. Thirdly he identified an openness on the part of the appellant

in respect of his wrongdoing which he considered boded well going forwards. Fourthly he addressed the adjudications in prison which he said were of concern but considered they should be seen in context. Fifthly he took into account the appellant's age under 18 at the time of the offences a factor he considered important and he found that there were material signs of emerging maturity which he concluded boded well for the future. The judge's reasons are succinct and cogent. It is apparent from them, as we have said, that he has fully confronted and addressed the seriousness of the offending, that he has nonetheless arrived at an on balance view.

16. In her submissions before us Ms Willocks-Briscoe said that the judge did not look sufficiently at the adjudications in prison and minimised the weight to be given to them. However, as she accepted, weight is a matter for the Tribunal and we are not persuaded that the judge's reasoning in this respect was perverse. He acknowledged the concern around the adjudications but put them into context, a key aspect of which he considered to be the age of the appellant and the emerging signs of maturity. Ms Willocks-Briscoe submitted that the appellant had shown defiance but this in our view amounts to a disagreement with the judge's view. It does not indicate any error of reasoning on the judge's part. Nor are we persuaded by her submission that the judge focused simply on the positive aspects of the appellant's conduct or case. His remarks at paragraph 47 readily acknowledge the serious nature of the offending. Further he refers at paragraph 48 to the appellant's remorse not being expressed as fully as one might like and finally he acknowledges the point made by Ms Willocks-Briscoe that the family support did not prevent the offending in the first place. Ms Willocks-Briscoe's submissions about the family; the judge not grappling with rehabilitation and a lack of clarity about where the appellant will reside must all be seen in the context of the fact that the appellant and his mother gave evidence before the judge. In this regard we remind ourselves that in the case of **Piglowska and Piglowski** Lord Hoffmann said as follows:

> "The Appellate Court must bear in mind the advantage which the first instance judge had in seeing the parties and the other witnesses. This is well understood on questions of credibility and findings of primary fact. But it goes further than that. It applies also to the judge's evaluation of those facts".

17. In his submissions in response, Mr Ó'Ceallaigh took us carefully through the relevant evidence. In our view the challenge by Ms Willocks-Briscoe is essentially a challenge to the judge's evaluation of the evidence and his findings of credibility. In our assessment these submissions and the other submissions advanced on the part of Secretary of State in the grounds, the skeleton argument or orally, amount to an attempt to persuade us to step beyond our legitimate remit on appeal or attempt to reargue the merits or challenge weight or else to seek reasons for reasons.

18. It follows that we are not persuaded of any consequential error in the proportionality assessment. In any event, in respect of the point about rehabilitation made in the context of proportionality, we note and accept

Mr Ó'Ceallaigh's submissions in relation to the appellant having been in England since he was 9 with no family in France apart from an uncle. In this regard, we accept his submission in relation to there being an obvious rationale for the judge's assessment in this regard.

Decision

19. In conclusion, the judge considered the evidence and reached findings open to him and we are not persuaded of any material error of law.

20. Accordingly, the Secretary of State's appeal fails.

No anonymity direction is made.

Signed: MRS JUSTICE THORNTON DBE Date: 24 November 2022

The Hon. Mrs Justice Thornton DBE
Sitting as a Judge of the Upper Tribunal