



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

Appeal Number: DA/00238/2019

THE IMMIGRATION ACTS

**Considered on the papers
On 10 July 2020**

**Decision & Reasons Promulgated
On 22 July 2020**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

MAME [D]

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Shore, promulgated on 4 February 2020. Permission to appeal was granted by Upper Tribunal Judge Bruce on 4 June 2020.

Anonymity

2. No direction has been made previously, and there is no reason for one now.

Background

3. The appellant last entered the United Kingdom after he was issued with an EEA Family Permit on 1 December 2009. He was subsequently issued

with a residence card valid until 25 June 2015. On 9 July 2015, he sought a permanent residence card. That application was refused and the appellant's appeal against that decision was unsuccessful. The appellant received a criminal conviction for drugs offences on 25 July 2016 and was sentenced to 6 years' imprisonment.

4. On 15 April 2019, the appellant was served with a decision to deport him under regulation 33 of the Immigration (European Economic Area) Regulations 2016. This is the decision under appeal.

The decision of the First-tier Tribunal

5. The appellant did not attend the hearing before the First-tier Tribunal, citing injuries resulting from a car accident. Counsel for the appellant withdrew following the judge's decision to proceed with the hearing in the appellant's absence. At that hearing, the respondent's representative handed up a PNC record of a different person which was said to relate to the appellant and which listed sixteen convictions. The judge relied on that record in dismissing the appeal.

The grounds of appeal

6. The grounds of appeal argue that ten of the sixteen offences could not relate to the appellant because he was in prison at the time and in addition, the Tribunal had recorded his date of birth wrongly. It was also briefly argued that the Tribunal had failed to consider the appellant's Article 8 rights or the best interests of his children, one of whom suffers from autism.
7. Permission to appeal was granted on the basis sought. In addition, Upper Tribunal Judge Bruce considered that it was not clear from the decision whether the serious grounds test at Regulation 27(3) was applied. Directions were sent to the appellant and respondent by post on 8 June 2020, inviting submissions as to whether there was an error of law as well as whether the matter could be decided without a hearing. The appellant is no longer represented. No response was received from him. Nor was any response received from the respondent by 29 June 2020, which was the deadline for a response, nor by 10 July 2020 when this matter was considered.
8. In view of the absence of any response from the respondent as well as the obvious error regarding the assessment of the convictions, I could see no reason to delay consideration of this matter any further.

Decision on error of law

9. The decision letter in this case listed only a conviction for drugs offences in 2016, which was followed by a 6-year prison sentence.

10. The PNC lists a large number of convictions apparently committed by a different person or people including during the three-year period following the appellant's 2016 conviction when he was in prison.
11. In addition, the PNC relates to a person from Eritrea, whereas the appellant is a Senegalese national. The First-tier Tribunal accepted this evidence without scrutiny and relied upon it to reach a view that the appellant posed a serious threat to the fundamental interests of society [88.19], [89.5] and [89.7]. Anxious scrutiny of this evidence, which was handed up without notice to the appellant or his representatives was essential to ensure a fair hearing. That scrutiny was absent in this case. Accordingly, the appellant has been deprived of a fair consideration of his case and the matter must be remitted for a de novo hearing, with no findings preserved.

Decision

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

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Taylor House, with a time estimate of one day by any judge except First-tier Tribunal Judge Shore.

Signed:

Date 05 August 2020

Upper Tribunal Judge Kamara