



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

Appeal Number: DA/00614/2018

THE IMMIGRATION ACTS

**Heard at Bradford via Skype
On 20 August 2020**

**Decision & Reasons Promulgated
On 6 October 2020**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

GB

(Anonymity order made)

Respondent

Representation:

For the Appellant: Mrs Aboni, Senior Home Office Presenting Officer

For the Respondent: Ms C Fletcher instructed by Sharma Law Solicitors.

ERROR OF LAW FINDING AND REASONS

1. The respondent appeals with permission a decision of First-tier Tribunal Judge Clarke ('the Judge') promulgated on 13 March 2020 in which the Judge concluded that GB had shown that the custodial sentence had changed him and that he would avoid reoffending in the future; such that the test of whether he posed a present, genuine and sufficiently serious threat to the public to justify his deportation on the grounds of public policy had not been made out on the evidence.

2. The Secretary of State sought permission to appeal which was granted by another judge of the First-tier Tribunal on the basis it was arguable Judge Clarke materially erred in law for all the reasons set out in the application.

Background

3. GB is a Romanian national who on 11 December 2010 was cautioned for providing facilities for gambling other than under an exemption. On 1 October 2015 GB was also cautioned by the Metropolitan Police for racially or religiously aggravated alarm or distress by words or writing. On 29 July 2016 GB was convicted at Central London Magistrates Court of 24 counts of providing facilities for gambling other than under an exemption and sentenced to four months imprisonment wholly suspended for 2 years. On 15 May 2018, GB was convicted of dishonestly making false representations to make gain for self or another or cause loss to or expose others to risk, acquiring, using or possessing criminal property and breach of suspended sentence order and sentenced to 12 months imprisonment.
4. The Judge did not find that GB had acquired a right of permanent residence in the United Kingdom meaning it was only the lower level of protection that was being considered.
5. The Secretary of State asserts in her grounds that the Judge failed to consider the seriousness of the consequences of reoffending on the basis that the consistency of GB's offending is in itself strongly indicative of a propensity to reoffend and the potential consequences of reoffending serious. The Secretary of State asserts the number of cautions and convictions, combined with the fact the appellant reoffended during the duration of his suspended sentence, demonstrate that he has no respect for the law and has failed to accept the consequences of his actions and represents a genuine, present and sufficiently serious threat affecting the fundamental interests of society, as set out at paragraph 3 of schedule 1 - Consideration of Public Policy, Public Security and the Fundamental Interests of Society etc of the Immigration (EEA) Regulations 2016.
6. The Secretary of State argues there is insufficient evidence to show GB has adequately addressed the reasons for his offending behaviour and that absent any form of rehabilitation to address such behaviour there is no basis to support a finding that GB does not pose a threat to society. The Secretary of State notes GB was only released in December 2018 and it is said to be too soon to say he does not represent a threat. His family failed to stop his offending in the past and there is a lack of reasoning as to why they could now.
7. The Secretary of State asserts the Judge failed to give adequate reasons as to why GB, given his age, work skills and relatively good health, could not find employment and accommodation, and undertake his rehabilitation in Romania.
8. The Secretary of State also argues the Judge failed to engage with the Schedule to the 2016 Regulations and that the Judge's reasons for

finding there is no genuine and present threat are inadequate and that the appellants deportation is proportionate and justified on the grounds of public policy.

9. Ms Fletcher has filed a rule 24 reply opposing the appeal.

Grounds and submissions

10. Mrs Aboni relied upon the pleaded grounds asserting the Judge had not given adequate reasons for why GB presented no risk of reoffending. It was submitted the judge had not given adequate attention to the consequences of reoffending and to the fact that GB is a prolific offender with no respect to the law of the United Kingdom.
11. Mrs Aboni submitted that at [23] the Judge refers to the pattern of reoffending but fails to give adequate reasons as to why GB did not present an ongoing threat.
12. Mrs Aboni accepts the Judge noted GB claimed he was remorseful, but submitted that an analysis of the Judge's findings focus mainly on the effect on the family and not on the basis of offending and reasons for the same as the foundation for such alleged remorse. It was submitted the Judge accepted that at the time GB committed the offences it was financial reasons that motivated his offending but the evidence before the Judge was that GB's wife was no longer working and the risk of a similar situation of financial necessity arising existed, which it was submitted was enough to create a real risk. Mrs Aboni submitted this is also a situation where no rehabilitation work had been undertaken in the United Kingdom.
13. On behalf of GB Ms Fletcher submitted the Judges reasoning arises from the evidence before the First tier Tribunal and the effect upon the appellant of having been imprisoned and also the evidence from his Probation Officer in the appeal bundle stating that GP posed a low risk of reoffending.
14. It was accepted GB explained the reason for his offending was for financial gain but it is submitted the Judge was entitled to find that what had occurred to him was a deterrent, being detained, which enabled GB to gain insight into his offending.
15. In relation to the Enhanced Thinking Scheme, a course to assist offenders gaining insight into their offences with a view to preventing reoffending, it was accepted the same had not been undertaken by GB although he still had insight as to the cause of his offending arising from financial problems which the judge was entitled to take into account; including the appellants evidence he was not associating with those he associated with in the past.
16. It was submitted that the Judge, having received the evidence balanced the rehabilitation that had taken place with risk and addressed his mind to this as noted in the rule 24 reply.
17. It was further submitted the Judge was entitled to find on the basis of the Probation Report and evidence from the appellant that he did not pose a real risk of reoffending and that his time in prison in the UK had

rehabilitated him. Ms Fletcher submitted there was evidence of a genuine commitment to change.

Error of law

18. It was no OASys report but there is a letter received from the appellants Probation Officer setting out the reasons why GB was considered to present as a low risk if offending and confirming the work that had being undertaken with him.
19. The point made by the Secretary of State in her grounds that the Judge failed to consider the seriousness of the consequences of reoffending may be relevant in cases if there was a finding an individual is likely to reoffend. The case quoted of Kamki [2017] EWCA Civ 1715 involved a convicted rapist who denied committing the sexual the offence for which he had been charged and convicted by a jury, as a result of which he undertook no rehabilitation work in prison. Although it was found that the probability of reoffending was a low the overall risk impact arising from the commission of similar offences meant that the risk to vulnerable young women was high. There was not before the Judge in this appeal sufficient evidence to warrant a similar or like finding being made on the evidence.
20. The Judge clearly took GB's offending into account writing at [23] "The appellant has shown a pattern of criminal wrongdoing, and an escalation in his wrongdoing, and the fact that he went on to commit a much more serious offence during the course of a suspended sentence showed a flagrant disregard for the laws of the UK ." The Judge, between [26 - 29] writes:
 - "26 The letter from the probation office reads how the Appellant showed compliance throughout his sentence and shows a low risk of harm and the supervision every 3 months from September 2019 would focus on him not reoffending. Given that it is now February 2020, I conclude the Appellant has shown he has complied with the sentence, the licence after he was released from custody after serving 6 months of the 12 months sentence.
 - 27 I have considered carefully the initial and blatant disregard for the laws of the UK by the repeated gambling and money laundering offences, but set against this, the Appellant has shown in the evidence of his wife and what he has told me, together with the letter from his Probation Officer, that his risk of reoffending is now low because the custodial sentence has rehabilitated him.
 - 28 The Appellant and his wife explained the very great impact it has had upon them, and their children, and they have the insight to understand why it was he committed the trigger offence - lack of money to pay the rent and bills - but how this is not the appropriate avenue to financially provide for the family. The wife was adamant and emphatic about how the appellant would not reoffend.

- 29 The Appellant has various skills in the workplace, he can fix plasterboard, worked in demolition and in farming, and he trained in his country to be a car mechanic although he has never worked at this. I accept that his ability to take on new work skills is evidence that if he wishes to change and behave in a non-criminal manner he has the determination to do so. I also note they are living in a family unit which provides additional emotional as well as economic support by sharing the bills, and the wife can also work as well.”
21. In addition to the documentary evidence the Judge had the benefit of seeing and hearing oral evidence being given. The Judge clearly considered the nature and frequency of the appellant’s offending. It is not made out the Judge failed to consider that evidence with the required degree of anxious scrutiny.
22. The Judge was satisfied there was evidence of rehabilitation in the United Kingdom. Ms Fletcher, in answer to a question from the Bench, indicated the appellant had not undertaken the enhanced thinking courses in prison as the same had not been offered to him but said he had undertaken work with his Probation Officer; as noted in the evidence before the Judge.
23. The Judge having assessed that evidence concluded the appellant had established he did not pose a present, genuine, and sufficiently serious threat to the public to justify his deportation on the grounds of public policy. The opposite had not been made out. Whilst the Secretary of State may disagree with that conclusion, it is not a conclusion that is arguably irrational, not adequately reasoned by the Judge, or is a finding outside the range of findings the Judge was entitled to make on the evidence.
24. As the Judge finds it had not been established the appellant poses a present, genuine, and sufficiently serious threat, the Judge was not arguably required to do more.
25. Having carefully considered the submissions made on behalf of the Secretary of State I find she has failed to establish legal error material to the decision to dismiss the appeal. The Judge’s finding that the evidence did not indicate a likelihood of GB causing serious harm or committing further offences at the date of decision has not been shown to be unsafe.

Decision

- 26. There is no material error of law in the Immigration Judge’s decision. The determination shall stand.**

Anonymity.

27. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 24 August 2020