IAC-AH-DP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/01451/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13th October 2015	**On 19th October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

MARIS DROSPRATS
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: No representation
For the Respondent: Miss A Fijiwala, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge of the First-tier Tribunal O R Williams (the Judge) promulgated on 25th March 2015.

2. The Appellant is a male Latvian citizen born 1st April 1982. On 30th December 2014 the Respondent decided to make a deportation order on grounds of public policy in accordance with regulations 19(3)(b) and 21 of the Immigration (European Economic Area) Regulations 2006 (the 2006 regulations).

3. The Respondent noted that there was no evidence of the Appellant's lawful entry to the United Kingdom and he had provided no evidence of having exercised treaty rights. The Respondent had written to the Appellant on 11th December 2014 notifying him that because of his criminal convictions and behaviour in the United Kingdom, it was intended to make a deportation order against him on the grounds of public policy. There had been no response from the Appellant to that letter.

4. The Respondent noted that on 16th April 2014 the Appellant was fined for theft from a shop and racially/religiously aggravated harassment, alarm or distress.

5. On 25th November 2014 the Appellant was sentenced for a further offence of theft, by receiving one day's detention at court and ordered to pay costs. He had also committed an offence of failing to surrender to custody at an appointed time.

6. The Respondent noted that the Appellant had been convicted of robbery at Bauska District Court Latvia on 20th May 2009, and received four years' imprisonment and a probation order for one year. On 16th September 2009 the Appellant was convicted of robbery at Jekabpils District Court Latvia of an offence of robbery and received four years' imprisonment and a probation order for one year.

7. The Respondent considered in the light of these convictions, in accordance with regulation 21 of the 2006 regulations, the Appellant would pose a genuine, present and sufficiently serious threat to the interests of public policy if he was allowed to remain in the United Kingdom, and that his deportation was justified under regulation 21.

8. The Respondent did not consider that there were any very compelling circumstances which would mean that the Appellant should not be deported and there was no satisfactory evidence of the Appellant having family life with a spouse or child, and therefore it was considered that deportation would not breach Article 8 of the 1950 Convention.

9. The Appellant's case was certified under regulation 24AA of the 2006 regulations on the basis that he could be returned to Latvia even though his appeal had not been concluded, because he would not face a real risk of serious irreversible harm if removed from the United Kingdom.

10. The Appellant appealed to the First-tier Tribunal. In summary he explained that he came to the United Kingdom on 15th December 2013 and had worked for a number of factories and agencies. He contended that as a citizen of an EEA country he had the right of free movement within the EEA. The Appellant explained he wanted to start a new life in this country, and be a useful member of society and work hard.

11. The appeal was heard by the Judge on 18th March 2015. The Appellant was produced from detention, but excluded from the hearing because of his threatening and disruptive behaviour. The appeal proceeded in his absence. He was not legally represented.

12. The Judge considered that the Appellant was not entitled to asylum. This had not been raised in the Grounds of Appeal, but the Appellant had subsequently claimed that he was going to be threatened if he returned to Latvia. The Appellant claimed to have spent sixteen years in prison in Latvia. The Judge analysed the evidence and found that the Appellant would not be at risk if removed to Latvia and therefore dismissed the appeal with reference to asylum, humanitarian protection, and Articles 2 and 3 of the 1950 Convention.

13. The Judge considered separately the decision to deport pursuant to the 2006 regulations and concluded the Respondent's decision was lawful and proportionate and the appeal was dismissed on that ground.

14. The Judge then considered Article 8 and concluded that the decision to deport the Appellant was proportionate and would not breach Article 8.

15. This caused the Appellant to apply for permission to appeal to the Upper Tribunal. In his initial application for permission he apologised for his behaviour at the hearing centre and contended that the Judge erred in law by not allowing him to give evidence in person. The Appellant contended that he has a long term partner in the UK and they intend to marry. He also contended that he would be at risk if returned to Latvia, and he feared ex-prisoners, gangs, Latvian Prison Service officers, and the Latvian Police Force.

16. Permission to appeal was refused by Judge of the First-tier Tribunal Ford on 21st April 2015, on the basis that the grounds disclosed no arguable material error of law.

17. The Appellant renewed his application for permission to appeal to the Upper tribunal, contending that the error was to proceed with the appeal in his absence.

18. Permission to appeal was granted by Upper Tribunal Judge Rintoul on 15th July 2015 in the following terms;

> "Although the Appellant was and is unrepresented, First-tier Tribunal Judge O R Williams excluded the Appellant from the hearing and proceeded in his absence. It is arguable that he did not give adequate reasons for doing so, given the interest in an Appellant being able to put his case and be heard, and given the findings at [35]. It is noted that the direction as to the burden of proof at [13] may be an error."

19. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 contending, in summary, that the Judge had directed himself appropriately and his decision disclosed no error of law.

20. Directions were subsequently issued making provision for there to be a hearing before the Upper Tribunal to decide whether the First-tier Tribunal decision should be set aside.

The Upper Tribunal Hearing

21. There was no attendance by or on behalf of the Appellant. Miss Fijiwala advised that the Appellant had been deported on 4th August 2015, and submitted a Notification of Removal of that date, confirming the deportation.

22. Miss Fijiwala confirmed that there was no indication in the Respondent's file that the Appellant had made any application pursuant to regulation 29AA of the 2006 regulations, to be temporarily admitted to the United Kingdom in order to make submissions in person to the Tribunal.

23. I considered rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008, which provides that if a party fails to attend a hearing, the Upper Tribunal may proceed with the hearing if satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing, and considers that it is in the interests of justice to proceed with the hearing.

24. The Tribunal file revealed that the grant of permission to appeal had been sent to the Appellant at the Morton Hall Immigration Detention Centre on 3rd August 2015, the day before the Appellant was deported. The Appellant had not communicated further with the Tribunal since he submitted his application for permission to appeal which was granted on 15th July 2015. The Appellant had not provided the Tribunal with an address in Latvia.

25. The notice of hearing, indicating that the appeal would be heard by the Upper Tribunal on 13th October 2015, was sent on 17th September 2015 to Morton Hall Immigration Detention Centre. At that time the Tribunal was not aware that the Appellant had been deported, and therefore that was the last known address for the Appellant, and the address that he had used when he submitted his application for permission to appeal.

26. In view of the fact that the Appellant has not communicated with the Tribunal, and not provided an up-to-date address, and the Tribunal had not been advised that he had been deported, I decided that all reasonable steps possible had been taken to notify the Appellant of the hearing. In the absence of any communication from the Appellant, the Tribunal had no address for him, other than the immigration detention centre.

27. I therefore decided that it was in the interests of justice to proceed with the hearing.

28. I heard oral submissions from Miss Fijiwala who relied upon the rule 24 response. I was asked to find that the judge gave clear reasons for excluding the Appellant and was entitled to do so in view of the Appellant's behaviour.

29. I was asked to find that the Judge had not erred in relation to the burden of proof, and had correctly analysed the evidence and carried out a balancing exercise, and had not erred in law.

My Conclusions and Reasons

30. The Judge granting permission has raised two issues. The first relates to a question of whether the Judge gave adequate reasons for excluding the Appellant from the hearing, taking into account that he was unrepresented. I set out below the head note to Budhathoki (reasons for decision) [2014] UKUT 00341 (IAC) which I regard as a relevant authority in relation to adequacy of reasoning;

> "It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost."

31. In this case it was incumbent upon the judge to explain why he had taken the decision to exclude the Appellant from the hearing. The Judge has set out his reasons in paragraph 5 of his decision, and in my view they are adequate and sustainable, and clearly indicate to the Appellant why he was excluded from the hearing.

32. I note that the Appellant in making his initial application for permission to appeal stated in relation to his behaviour "I completely accept my fault and again, please accept my apologies".

33. The Judge reminded himself of the overriding objective to deal with the case fairly and justly, and has explained that when the case was initially called on it was not possible to proceed because the two security officers could not control the Appellant.

34. The Record of Proceedings indicates that the case was initially called on at 11.00am and put back, then called on again at 12.06. The Judge explains in paragraph 5 of his decision, that he spoke to the Appellant with the assistance of an interpreter, telling him that he had fifteen minutes to calm down, and if he did not, then the case would proceed in his absence.

35. When the case was called on again, it is clear from the decision that the Appellant did not calm down and was not willing to cooperate. What paragraph 5 does not show, but the Record of Proceedings does, is that the Appellant indicated that he was not willing to go into the hearing room.

36. The Judge correctly had regard to rule 27 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 in particular 27(4)(a) which enables the Tribunal to give a direction excluding from the hearing any person whose conduct the Tribunal considers is disrupting or is likely to disrupt the hearing.

37. The Judge has given adequate reasons explaining why he decided to proceed in the Appellant's absence, and explained that the Appellant was given the opportunity to reflect and calm down but did not do so. I find no error on this issue.

38. The second issue raised by the Judge granting permission relates to a direction in paragraph 13 as to the burden of proof.

39. I have considered the decision as a whole, and conclude that the Judge did not materially err. It is clear that the Judge correctly set out the burden of proof in paragraphs 7, 8 and 9. I do not find that the Judge erred in his consideration of regulations 19 and 21 of the 2006 regulations. The Judge reminded himself of the provisions of regulation 21(5) and those provisions are set out in paragraph 12, and in the same paragraph regulation 21(6) is summarised.

40. The judge in paragraph 32 set out the factors in favour of the Appellant not being deported, and then set out the factors in favour of deportation in paragraphs 33-36. The judge took into account the factors set out in regulation 21(6) in paragraph 37.

41. In paragraph 38 the Judge conducted a balancing exercise, and concluded, in relation to the 2006 regulations, that the Appellant's removal was proportionate. In my view he did not err by so doing.

42. I have considered all the matters raised in the Appellant's application for permission to appeal. In my view, the judge considered all material matters, did not consider any immaterial matters, and made findings that were open to him on the evidence, and gave adequate and sustainable reasons for those findings.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision must be set aside.

I do not set aside the decision. The appeal is dismissed.

Anonymity

No anonymity direction was made by the First-tier Tribunal. I see no reason to make an anonymity order.

Signed Date: 14th October 2015

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT
FEE AWARD

The decision of the First-tier Tribunal stands and therefore so does the decision to make no fee award.

Signed Date: 14th October 2015

Deputy Upper Tribunal Judge M A Hall