



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00102/2020**

THE IMMIGRATION ACTS

**Heard at Manchester (Via Skype)
On 8 April 2021**

**Decision & Reasons Promulgated
On 20 April 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AYOB TAREY

(Anonymity direction not made)

Respondent

Representation:

For the Appellant: Mr Walker Senior Home Office Presenting Officer.

For the Respondent: Mr Hussain instructed by Cartwright King Solicitors.

DECISION AND REASONS

- 1.** The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Athwall ('the Judge') promulgated on 8 December 2020, in which the Judge allowed the appellant's appeal against the order of his deportation from the United Kingdom.
- 2.** The appellant is a citizen of the Netherlands, and therefore an EEA national, born on 28 February 2000 who entered the UK aged two months with his mother.

3. The Judge considered the evidence with the required degree of anxious scrutiny setting out findings of fact from [36] of the decision under challenge. The Judge found the appellant's integration into the United Kingdom had been broken but it was accepted by the Presenting Officer that the appellant had obtained a permanent right of residence.
4. The core finding of the Judge is at [53], forming part of the assessment of threat posed by the appellant in which the Judge writes:

"I have balanced all the factors and whilst I find that whilst the offending behaviour, because of the nature of the index offence and the offences taken into consideration, is of a greater seriousness. I do not find based on the sentencing judge's remarks and OASys reports that the Appellant poses a genuine and present threat. The Appellant has demonstrated that he started to engage with the probation and prison services in June 2019 and has continued since. He has an extremely supportive family who have provided him with stable, accommodation, financial and emotional support since he committed the index offence. It is extremely unlikely that they will remove that support now and that means the changes in circumstances that would cause him to reoffend are unlikely."

5. The findings that the appellant poses no risk of reoffending is fatal to the Secretary of State's case in EU law. Accordingly, the Judge finds that whilst the respondent must establish that the expulsion decision complies with the requirements set out in regulation 27(5) the respondent had failed to do so, leading to the appeal being allowed.
6. Permission to appeal was initially refused by another judge of the First-tier Tribunal on the basis the grounds were simply a disagreement with the findings the Judge was entitled to make but granted by the Upper Tribunal on a renewed application. The operative part of that grant been in the following terms:

"Whilst the grounds of appeal come fairly close to being disagreement with the First-tier Tribunal's assessment of risk and the weight to be attributed to the evidence before it, it is just arguable that there has been a failure to give adequate reasons for the conclusions reached, particularly given the risk factors and assessment in the OASys report and the same family and financial circumstances at the time of offending."

7. The Court of Appeal have recently reminded us that an appellate judge should not grant permission to appeal or find error of law because they or a party disagree with the decision made or because another judge may have arrived at a different outcome. There is a need to identify a genuine legal error material to the decision under challenge. The Judge in this appeal clearly considered the evidence relied upon by both parties with the required degree of anxious scrutiny. It is not made out the weight the Judge gave to any aspect of the evidence is irrational. It is not made out the Judge did not understand the law or failed to apply the law correctly. The Judge's assessment that the appellant poses no ongoing risk is a factual assessment based upon proper consideration of the evidence. Whilst the Secretary of State disagrees with that conclusion it is not made

out it is a finding outside the range of those reasonably available to the Judge on the evidence.

8. If the appellant commits further offences the Judge will be shown to be wrong, but that is not the situation that exists at the date of the hearing. If the appellant does, he is more likely to be deported following the changes to the deportation regime as a result of the UK leaving the European Union.
9. I am not satisfied that the Secretary of State has established arguable legal error material to the decision to allow the appeal, such as to warrant the Upper Tribunal interfering any further in this matter.

Decision

10. **There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

11. The First-tier Tribunal made no 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 9 April 2021