Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: DA/02063/2014**

THE IMMIGRATION ACTS

Heard at: Manchester	**Decision & Reasons Promulgated**
On: 3rd February 2016	**On: 12th February 2016**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

VENES TANASE
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Tetteh, Counsel instructed by Lawson Taylor Solicitors

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Romania born on the 7th August 1975.

2. Although the precise dates are not known it is accepted that the Appellant had been exercising his EEA treaty rights in the United Kingdom since at least 2007. He was living in Manchester with his wife and five children.

3. On the 16th January 2012 he was convicted of affray and sentenced to 16 months in prison. The sentencing remarks of the Judge explain that this affray was a violent public order offence in which up to twenty men, armed with knives, sticks, golf clubs and at least one meat cleaver set about each other on the streets of south Manchester. The Appellant was identified as the leader of one of the opposing "tribes" in this fight, a quarrel which erupting from a "Balkan style vendetta". The Appellant himself was armed with a cricket bat.

4. On the 22nd November 2012 the Respondent signed a Deportation Order against the Appellant. He left the country of his own accord on the 3rd December 2012.

5. On the 5th August 2013 the Appellant attempted to regain entry to the UK but was refused leave to enter. He subsequently made an application for the Deportation Order to be revoked. It was the Respondent's decision to refuse that application which was the matter appealed to the First-tier Tribunal.

6. The matter came before First-tier Tribunal Judge JS Law sitting at Manchester. The parties agree that the determination applies the correct legal framework. It was for the Appellant to show, with reference to Regulation 24A(4) of the Immigration (European Economic Area) Regulations 2006, that there had been a material change in circumstances since the Order had been made. The Order could only be revoked if the criteria for making it in the first place were no longer satisfied. This was to be determined with the proportionality principles set down in Regulation 21(5).

7. The Appellant relied on two matters which he submitted amounted to a material change in circumstances. First, his family in the UK had now expanded. As well as his wife and five children he now had two grandchildren. Second, he himself had committed no further offences and had been rehabilitated. He submitted that since he had established family links in the UK and there was no risk of reoffending, he should be readmitted.

8. Of these two matters Judge Law found that the birth of two grandchildren added nothing to the situation as it was at the time that the Order was made. At that time the Appellant had four minor children, today he has three minor children plus two grandchildren. The family claimed to need the help and support of the Appellant but had chosen not to go with him back to Romania. In respect of the Appellant's alleged rehabilitation the determination notes the terms of the sentencing remarks and the pre-sentence material: there was no evidence of any remorse expressed by the Appellant who had not undertaken any courses in prison. His family, who appeared before Judge Law, were found not to blame the Appellant, instead believing that he had been wrongly punished. Finding there to be no material change in circumstances since the Deportation Order was made,

Judge Law dismissed the appeal.

9. Permission has been granted, upon renewed application, on the grounds that it is arguable that Judge Law failed to have regard to s55 of the Borders, Citizenship and Immigration Act 2009. The grounds further alleged that the First-tier Tribunal failed to take material evidence into account.

My Findings

10. Although the reasoning in the determination is scant, it is apparent from the determination as a whole that the First-tier Tribunal was aware of all of the issues and the material evidence. The evidence of the witnesses is set out in some detail, as are the submissions.

11. On the first issue, relating to the 'best interests' of the Appellant's children, it is correct to say that the s55 assessment nowhere features in the 'findings' section of the determination. It was for that reason that Upper Tribunal Judge Pitt granted permission. I am however satisfied that this omission was not material. That is because the question before the Tribunal was so narrow, and the evidence so limited. The Deportation Order was made in November 2012 and at that time the Appellant had been living with his five children and was the 'head' of the household. Their best interests were specifically addressed in the unchallenged refusal letter dated the 13th November 2012: as the First-tier Tribunal notes, the Respondent gave full consideration to the nature and extent of the Appellant's family life in the UK. The decision to deport was nonetheless found to be proportionate, noting *inter alia* that the family had coped whilst the Appellant was in prison, and that it was open to them to relocate to Romania if they wished. The evidence before Judge Law did not establish that any of those material facts had changed. He heard evidence that the children were "not happy" about their father being in Romania and that they were "desperate to see him". This does not amount to a change in circumstance. They were not happy when he was in prison, and had been desperate for him to stay at the point that he left the UK in December 2012. Had the First-tier Tribunal found that the best interests of the children (and now infant grandchildren) outweighed the public interest in maintaining this Order, there can be little doubt that the Secretary of State would have appealed on the grounds that there was simply not the evidential foundation to make such a finding. There was no independent evidence, for instance from the children's teachers, that their behaviour or well being had deteriorated in his absence. The suggestion that there was no male figurehead appeared to be at odds with the role now assumed by the Appellant's eldest son, himself now a father. In the absence of any further evidence the First-tier Tribunal cannot be said to have erred in respect of the children.

12. As to the matter of rehabilitation, the evidence at the time of the deportation was that the Appellant had "given no consideration to the consequences of his actions". Although the NOMS assessment put the overall risk of reoffending as low the offender manager did believe that the Appellant would continue to pose a risk of harm to those whom he perceived to, for instance, have taken goods from him or his family (the fight had apparently arisen because of a dispute between the Appellant's son and a boy on the other side). He had not completed any courses in prison. In short, he had failed to demonstrate that he had shown any insight into his offending behaviour. The new evidence before Judge Law was again, extremely limited. Whilst there was no evidence that the Appellant had committed any further offences, there was no positive evidence to show that he had not. The evidence that he had been rehabilitated amounted to statements to that effect from the Appellant and his son. Mr Tetteh complained that in respect of the latter the determination does not fully reflect his evidence that what his father did was wrong. That evidence is recorded at paragraph 24, as is his evidence that the circumstances of the offence were not as described in court and that "there were reasons why he had got involved". Given that the evidence of this witness was being advanced to demonstrate that the Appellant had been rehabilitated, Judge Law was perfectly entitled to take into account the fact that he was apparently trying to offer mitigation as to why his father had taken to the street with a gang wielding weapons. Again, the evidence was not capable of showing there to be a change in circumstance. There was no error in the First-tier Tribunal's decision.

Decisions

13. The decision of the First-tier Tribunal does not contain an error of law and it is upheld.

14. I was not asked to make an order for anonymity and in the circumstances I see no reason to do so.

Upper Tribunal Judge Bruce
4th February
2016