



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006349

First-tier Tribunal No: EA/03259/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 8th February 2024

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

LADISLAV LIBAL
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance.

For the Respondent: Mrs Arif, a Senior Home Office Presenting Officer.

Heard at Birmingham Civil Justice Centre on 30 January 2024

DECISION AND REASONS

1. Following a hearing at the Birmingham Civil Justice Centre on 5 October 2023 the Upper Tribunal found an error of law in the decision of the First-tier Tribunal and set that decision aside. The matter comes back before us today for the purposes of substituting a decision to either allow or dismiss the appeal.

Preliminary issue - proceeding in absence.

2. Notwithstanding there having been valid service of the notice of hearing to the appellant's last notified address for service, neither he nor any representative attended on his behalf.
3. The appellant also failed to attend the Error of Law hearing. We were satisfied there had been valid service of the notice of hearing on that occasion too.
4. The notice clearly sets out the date, time, and venue of this hearing. There has been no explanation for the appellant's absence, no application to adjourn that has been granted or requires consideration, and it does not appear the appellant has engaged with the appeal since his appearance before the First-tier Tribunal.

There has been no further evidence or communication since the error of law determination was handed down.

5. We are also satisfied that it is in the interests of justice for us to proceed in the appellant's absence. Time and resources have been allocated for two judges to hear this appeal and hearings at Birmingham are at a premium in light of pressures on that Hearing Centre to allocate a court as a result of a number of jurisdictions requiring courts and clerks. In the absence of any form of communication or explanation it is not made out we should not go ahead. In deciding to proceed we have taken into account the principle of fairness and the overriding objective, and concluded it is appropriate to proceed in the appellant's absence in all the circumstances.
6. Although we do not know whether this is a contributory factor or not, Mrs Arif was able to advise us that the appellant had further involvement with the police in November 2022. We are aware he has been charged but not whether he has been convicted of any offence, whether he is on remand, or has returned to the Czech Republic. Lack of communication from the appellant simply means we do not know.

Background

7. The appellant is a citizen of the Czech Republic born on 20 November 1974. He appeals a decision of 14 October 2020 refusing admission to the United Kingdom. The immigration decision is headed Immigration (European Economic Area) Regulations 2016 Refusal Of Admission and the European Community Law (no in country right of appeal).
8. There is also a notice of refusal of leave to enter of the same date. The appellant had sought entry to the UK on the basis he holds EU Settlement Scheme (EUSS) settled status, but an Immigration Officer was satisfied it was appropriate to cancel such leave as was granted by virtue of Appendix EU, under paragraph 321(b)(iv) of the Immigration Rules in light of reliance on false or misleading information that he provided in his application for settled status.
9. The reasons for the decision are explained in the following terms:

You signed the declaration accompanying your application for settled status, confirming that the information you have provided was truthful. By doing so, you sought to conceal the fact that you had a number of convictions that spanned three countries.

I note the following:

- 1) 25/04/2012 - Czech Republic - Grievous Bodily Harm - 6 years imprisonment
- 2) 08/01/2009 - Czech Republic - Theft - 1 year 6 months imprisonment
- 3) 11/08/2004 - Czech Republic - Actual Bodily Harm - 1 year 4 months imprisonment
- 4) 12/06/2003 - Czech Republic - Theft - 2 years imprisonment
- 5) 17/01/2003 - Czech Republic - Theft - 1 year imprisonment
- 6) 27/09/2001 - Czech Republic - Theft - 1 year 4 months imprisonment
- 7) 14/08/1997 - Czech Republic - Sexual Assault with a minor - 1 year imprisonment
- 8) 14/08/1997 - Czech Republic - Sexual Assault with a minor - 1 year imprisonment
- 9) (second offence)
- 10) 26/10/1994 - Czech Republic - Theft - 6 months imprisonment
- 11) 27/09/1993 - Czech Republic - Actual Bodily Harm - 4 months

You have been found guilty on 10 separate occasions with a total of 24 Offences in the Czech Republic of a series of offences and received from the courts a total of over 17 years imprisonment. When initially interviewed, you denied having any convictions, clearly attempting to perpetrate this deceit on the basis these offences did not take place in the UK, after that you became difficult in interview and ultimately refusing to answer the questions put to you, as a result the interview was terminated. You only admitted you had trouble with the police that your determination to deceive is still paramount in your mind and your propensity to reoffend is clear based on the offences already mentioned.

10. The appellant refused to answer questions about his previous convictions when asked by the Immigration Officer but has filed a witness statement dated 13 May 2021 in which he accepts that in November 2011 he received a six-year sentence in the Czech Republic, although does not refer to the other offences set out in the above schedule.
11. In the same witness statement the appellant provides further information in which he states he lives with his parents in the UK following his move here with them in September 2011. His parents are both Czech nationals. The appellant claims to have a relationship with Marcela Surmaiova, a Czech citizen. The appellant also has a son in the UK.
12. The appellant states he has been diagnosed with mental health issues which he refers to as a 'schizoaffective disorder', a condition he says he was diagnosed with aged 12, which he claims prevents him from living a normal life. He suffers from delusions and fantasies, although describes himself as a happy person as he has been endowed with a talent for art.
13. The First-tier Tribunal Judge did express some surprise at the fact the appellant appeared before him in person. It appears to be the case that following receiving the refusal from the Immigration Officer the appellant issued a notice of appeal from either Poland or the Czech Republic. A Record of Proceedings taken by a First-tier Tribunal Judge sitting at Taylor House on 14 February 2022, at a case management review hearing, shows the appellant claiming that on 14 October 2020 he was stopped whilst returning to the UK from the Czech Republic, was interviewed in Calais and refused leave to enter, but returned to the UK in November 2020. He stated that he returned on a coach travelling through the Channel Tunnel where he was checked by an Immigration Officer to whom he claims he explained what had happened and that he had appealed, which was referred to a Senior Immigration Officer, resulting in the appellant being allowed to enter the United Kingdom as a tourist, although he stated that no stamp was placed in his passport. The credibility of this account was questioned by the First-tier Judge.
14. We have seen within the bundle correspondence from the Birmingham and Solihull Mental Health NHS Foundation Trust dated 6 February 2022, addressed to the appellant, containing an agreed care plan and recording the primary diagnosis of schizophrenia, unspecified (F209), a need for further investigation, and increasing the dosage of his prescribed medication Amisulpride.
15. We have also seen a decision notice from the First-tier Tribunal Social Entitlement Chamber following a hearing at Lincoln on 22 May 2019 in which it was found the appellant was entitled to a daily living component at an enhanced rate of Personal Independent Payment as he is severely limited in his ability to carry out activities of daily living, and the mobility component at the standard rate as he had limited ability to carry out mobility activities. The Hearing Notice states *"By reason of schizophrenia and learning disability Mr Libal is significantly limited. As a result Mr Libal qualifies for the above award of Personal Independent Payment. In reaching its decision Tribunal placed particular reliance upon the information in the GP letter"*. The decision was made on the papers in the absence of the parties, neither of whom requested an oral hearing.

16. We have also seen documents relating to the appellant's son, Roberto, who is at school in the UK and has settled status known as Indefinite Leave to Remain under the EUSS, and character references from family friends filed on the appellant's behalf, all of which we have taken into account even if we do not specifically refer to them in our findings.

Discussion and analysis

17. In relation to the cancellation of the appellant's Indefinite Leave to Remain we find the Secretary of State has discharged the burden upon him to the required standard to show that decision is justified on the facts and in law.
18. The appellant did not disclose in his application for settled status the fact he had been convicted of a number of serious offences, of violence and dishonesty, in the Czech Republic. Although the appellant was obstructive when questioned by the Interviewing Officer when attempting to re-enter the United Kingdom, he has since in his witness statement conceded the conviction on 25 April 2012 of Grievous Bodily Harm. On the evidence we have before us we find, on the balance of probabilities, that the appellant has been convicted of all those offences set out in the schedule, including the two sexual offences, albeit they occurred some time ago.
19. We have no satisfactory explanation for why the appellant omitted to make a full and frank disclosure on the application under the EUSS and are left therefore to conclude that the appellant deliberately and wilfully omitted to provide these details to enhance his prospects of receiving settled status and indefinite leave to remain. We find that a deliberate act of deception with the necessary intent.
20. In relation to the refusal of admission under European Community Law, the Secretary of State was satisfied the refusal of admission was appropriate on the grounds of Public Policy on the basis the appellant will pose a real threat to society.
21. The schedule of convictions shows the appellant has a propensity to violence as well as offences of dishonesty. There is in addition the issue of the November 2022 matter referred to above which also appears to relate to an offence of violence.
22. The fundamental values of society are to be found in Schedule 1 of the Immigration (EEA) Regulations 2016 ('the 2016 Regulations') which includes maintaining public order, preventing social harm, tackling offences likely to cause harm to society, protecting the rights and freedoms of others.
23. The appellant clearly entered the UK with his parents in 2011, remained for two months before returning to the Czech Republic, and re-entered in 2017. The chronology suggests that in the intervening period he was serving the period of imprisonment imposed by the court in the Czech Republic or any period of licence that may have required him to have remained in his home country.
24. We have no evidence of any attempt at rehabilitation or efforts to address the fundamental cause of the appellant's criminality. Although the first conviction of actual bodily harm for which the appellant received four months imprisonment is dated 27 September 1993 the offence of grievous bodily harm for which he received six years imprisonment is dated 25 April 2012 with more recent events in November 2022 indicating that the appellant's offending has been prolific in both quantity of offending, number of periods of imprisonment, the period of time, and ongoing threat posed by such offending.
25. We have no evidence from any professional indicating what the trigger event may be to explain the appellant's offending. We are satisfied that the Secretary of State has established a real risk that the appellant is likely to commit similar

offences in the future. There is also the issue of whether any reassurances given by the appellant previously can be trusted in light of his willingness to deceive in his applications and general conduct.

26. In conclusion, we find that the Secretary of State has established to the required standard a real risk that the appellant's acts of criminality, causing harm to an individual and/or society, will continue in the future. We find Secretary of State has made out that the appellant poses a threat to the fundamental requirement of public policy if allowed admission to the United Kingdom and therefore that the refusal of admission in accordance with Regulation 23 of the 2016 Regulations is in accordance with the facts and law.
27. The decision under challenge refers to Article 8 ECHR. We are aware from the witness statement that the appellant lives in the United Kingdom with his parents, his son, and a partner. It appears the son was cared for by the appellant's parents whilst he was in custody in the Czech Republic. We have read correspondence from the appellant's son stating it is his wish that his father be allowed to remain. There is no evidence of harm to the child, currently a teenager, whilst being cared for by his grandparents. We do not find it made out, notwithstanding the grandfather having health issues of his own, that the standard of care the child enjoyed in the past will not continue even if the appellant is not involved in providing it. We accept that the impact of the Secretary of State's decision is likely to result in the appellant's removal from the UK to the Czech Republic which will interfere with the family life that he has in the UK, together with his private life.
28. There is reference in the refusal notice to a pending case being against the appellant in the UK which we assume is the one referred to by Mrs Arif of the appellant being charged in November 2022 of a domestic incident - female.
29. The burden falls upon the Secretary of State to establish that any interference with a qualified right is proportionate. The appellant's failure to attend to explain his circumstances and why it would not be proportionate to dismiss his appeal on Article 8 grounds, when the Secretary of State has put forward a strong argument for why such interference is proportionate based upon the appellant's criminal history and finding of real risk if allowed to remain, even taking into account the procedural safeguards provided for in Articles 30 and 31 of Directive 2004/38/EC, leads us to conclude that the Secretary of State has discharged the burden upon him to the required standard to establish that such interference is proportionate to the legitimate aim being relied upon, when balancing the threat posed to the requirements of public policy in the UK against requirement to safeguard the appellant's welfare and right of free movement as an EEA national.
30. On the basis of the information we have before us, we dismiss the appeal.

Notice of Decision

31. Appeal dismissed.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

30 January 2024