Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00037/2014

THE IMMIGRATION ACTS

Heard at : Field House
On : 14 July 2014

Determination Promulgated
On 8 August 2014

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MARCIN ZAJACZKOWSKI
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr C Avery, Senior Home Office Presenting Officer
For the Respondent: Mr A Pipe, instructed by Premier Solicitors

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Mr Zajaczkowski's appeal against the decision

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to deport him from the United Kingdom pursuant to regulation 19(3)(b) of the Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations").

2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and Mr Zajaczkowski as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is a citizen of Poland, born on 26 March 1985. He claimed to have arrived in the United Kingdom in January 2006 and first came to the adverse attention of the authorities in the United Kingdom when he was arrested in connection with the index offence of cultivating cannabis, a Class C controlled drug, on 4 December 2012. On 28 May 2013 he was convicted at Luton and South Bedfordshire Magistrates Court of being concerned in the production of Class B Controlled Drug and on 28 June 2013 he was sentenced at Luton Crown Court to 12 months imprisonment and ordered to pay a victim surcharge of £100. On 16 July 2013 he was served with a liability for deportation notice and on 23 December 2013 the respondent made a decision to deport him under regulation 21 of the EEA Regulations.

4. In the reasons for deportation letter, the respondent considered that the evidence submitted by the appellant was insufficient to confirm his continuous residence and employment of five years in accordance with the EEA Regulations and that he had therefore not acquired the right to permanent residence. Although he had been assessed as a low risk of harm in a NOMS 1 assessment the respondent considered that he nevertheless had a propensity to re-offend and that he posed a genuine, present and sufficiently serious threat to the interests of public policy. It was considered further that his deportation would not breach his Article 8 rights under the ECHR.

5. The appellant appealed against that decision and his appeal was heard in the First-tier Tribunal on 2 April 2014 by a panel consisting of First-tier Tribunal Judge Hollingworth and Mrs R M Bray JP. On the basis of the documentary evidence before them, the panel found that the appellant had arrived in the United Kingdom in January 2007 and had been exercising treaty rights since that time. Accordingly they accepted that by the time of the index offence he had acquired the right of permanent residence in the United Kingdom. They therefore went on to consider the second level of seriousness under the EEA Regulations. They noted that he had a daughter from his previous marriage but currently had no contact with her and that he had a child born on 11 December 2013 from a current relationship. Having considered his circumstances in the United Kingdom and in Poland, they concluded that his conduct did not satisfy the "serious grounds" test in Regulation 21(3) and they allowed the appeal under the EEA Regulations.

6. The respondent sought permission to appeal to the Upper Tribunal on two grounds: that the Tribunal had failed to provide adequate reasons for finding that the appellant had acquired a permanent right of residence, given the gaps in the evidence of continuous lawful residence; and that the Tribunal had failed to provide adequate reasons why the

appellant's conduct did not meet either the threshold of serious grounds of public policy or security or the lowest threshold of grounds of public policy.

7. Permission to appeal was initially refused, but was subsequently granted on 22 May 2014 on the grounds that in view of the large gaps in the documentary evidence relating to continuous residence the panel had arguably erred in finding that the appellant had been living in the United Kingdom for a continuous period of five years.

Appeal hearing and submissions

8. Mr Avery accepted that the appellant had produced, at the hearing before the First-tier Tribunal, a page that had been missing from the documentary evidence which covered the missing period and satisfactorily addressed the first ground of appeal. With regard to the second ground, he submitted that whilst there was a lengthy assessment of the facts, the assessment of risk was superficial and accordingly flawed.

9. Mr Pipe submitted that there had been a proper assessment of risk and he referred to the relevant parts of the determination.

10. Mr Avery, in response, reiterated the points previously made.

Consideration and findings.

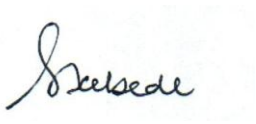
11. As Mr Avery helpfully conceded, it is plain that the missing page produced before the First-tier Tribunal to complete the appeal bundle previously submitted did indeed cover the missing period of time relied upon by the respondent in concluding that the appellant had not demonstrated five years of continuous residence exercising treaty rights in the United Kingdom. Accordingly, the Tribunal was entitled to find that the appellant had demonstrated the relevant period and had thus acquired a right of permanent residence in the United Kingdom. The Tribunal therefore properly considered the appellant's circumstances in the context of the second level of seriousness under regulation 21(3), namely that "3) A relevant decision may not be taken in respect of a person with a permanent right of residence under regulation 15 except on serious grounds of public policy or public security."

12. The only remaining ground of appeal challenges the Tribunal's risk assessment, which Mr Avery submitted was superficial and flawed. I do not agree, but consider that the grounds amount in essence to a disagreement with the Tribunal's decision. At paragraphs 26 to 61 the panel considered the appellant's circumstances in some detail, taking account of the nature of the index offence, his lack of previous criminal history, his behaviour in prison, the risk assessments in the pre-sentence report and the NOMS 1 assessment, his remorse, his efforts at rehabilitation, his compliance with the conditions of his licence and his family relationships. It is clear that the panel gave careful consideration to all relevant matters when considering risk and they were entitled to conclude, on the evidence before them, that his conduct did not meet the level of seriousness required to justify his deportation under regulation 21(3).

13. Accordingly I find that the Tribunal did not make any errors of law in its decision. It was entitled to reach the decision that it did.

DECISION

14. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The Secretary of State's appeal is dismissed and the decision of the First-tier Tribunal to allow Mr Zajaczkowski's appeal stands.

Signed 

Upper Tribunal Judge Kebede