



IAC-FH-AR-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: DA/00773/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 9 November 2015**

**Decision & Reasons Promulgated
On 26 November 2015**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

**DARIUSZ TOBOLA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Miss A B Weller, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, who was born on 26 October 1971, is a national of Poland. He was previously in the United Kingdom as a self-employed painter and decorator but now is on Employment Support Allowance. It is his case that he entered the United Kingdom on 4 April 2003 as a visitor because, at that point, Poland was not in the European Union and did not join it until 1 May 2004. He has committed 19 offences since 28 November 2004 and was sentenced to twelve months imprisonment on 10 August 2005, three months and 20 days on 11 October 2013 and twelve weeks on 24 February 2014. These offences include shoplifting, assault occasioning actual bodily harm, criminal damage and going equipped for theft.

2. On 23 April 2014 the Secretary of State for the Home Department made a decision to deport him on the basis that he posed a genuine, present and sufficiently serious threat to the interests of public policy if he were to be allowed to remain in the United Kingdom. He was also served with a one stop notice on 28 April 2014 and he appealed on 30 April 2014.
3. First-tier Tribunal Judge Griffiths dismissed his appeal on 3 February 2015. In particular, in paragraph 46 the judge said:

“I am unable to find that the document from the Department of Work and Pensions is determinative in the absence of additional documentation. Therefore I am not satisfied that the appellant can show he has lived in the UK in accordance with ... relevant Regulations for a continuous period of five years.”
4. The Appellant appealed against this decision and on 4 March First-tier Tribunal Judge Baker gave him permission to appeal to the Upper Tribunal on the basis that it was unreasonable to give no weight to the letter from the Department of Work and Pensions. He also found that there was merit in the Appellant’s submission that he had lived in the United Kingdom for a continuous period of more than ten years before a decision was made to deport him.
5. The Respondent sent in a Rule 24 response on 20 March 2015.

Notice of Decision

6. The Appellant did not appear at the hearing but a friend attended on his behalf. He explained that the Appellant wanted to apply for an adjournment of the error of law hearing. He submitted a letter from Wandsworth Medical Centre, dated 6 November 2015, which stated that the Appellant had been diagnosed with depression in August 2014 and had been prescribed an anti-depressant. It also said that the Appellant had asked for his hearing to be rescheduled for a later date as he felt that his mood was currently too low to attend. He submitted a Statement of Fitness to Work. It said that the Appellant was not fit to work from 8 November 2015 and 8 December 2015. However, neither of these documents said that he was not fit to attend the hearing. I was also informed that the Appellant could not afford to instruct a legal representative. The Respondent opposed an adjournment.
7. I considered whether to exercise my case management powers under rule 5(3)(h) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and adjourn the hearing and decided that it was not in the interests of justice to do so as it was unclear when the Appellant would be fit to attend the error of law hearing and it was not likely that he would be able to address the legal issue in question even if he did attend.
8. There was no dispute between the parties that the Appellant had committed a significant number of offences whilst in the United Kingdom. However, in order to justify his deportation the Respondent had to decide how long he had lived in the United Kingdom and if he had a right of permanent residence. Regulation 21 of the Immigration (European

Economic Area) Regulations 2006 provides for three different tests dependent on an individual's status and length of residence in the United Kingdom.

9. When the Appellant applied for permission to appeal to the Upper Tribunal he asserted that he had lived here for more than ten years and that, therefore, he could only be deported on imperative grounds of public security in accordance with regulation 21(4) of the EEA Regulations. However, the Respondent correctly relied on the case of C-400/12 in which the Court of Justice of the European Union held that the proper construction of the Directive is that the ten year period of residence referred to in an application must in principle be continuous and must be calculated back by counting from the date of the decision ordering an expulsion. Given the periods of imprisonment referred to above, it is clear that regulation 21(4) does not apply to the Appellant.
10. At the hearing before First-tier Tribunal Judge Griffith, the Appellant relied on a letter from the JobcentrePlus, dated 27 May 2014, which confirmed that he had commenced work as a self-employed person on 24 September 2006 and had subsequently been in receipt of ESA and that it was accepted that he had acquired a permanent right of residence in the United Kingdom under regulation 15 of the EEA Regulations.
11. In paragraph 46 of her decision and reasons First-tier Tribunal Judge Griffith found that she was unable to find that the document from the DWP was determinative in the absence of additional documentation. But when doing so she failed to take into account the fact that it can be presumed that the DWP had ready access to the national insurance and benefit records, which would have confirmed that he had acquired a permanent right of residence. She also failed to take into account the fact that the Respondent regularly relies on such records when assessing an applicant or appellant's entitlement to residence or leave.
12. As a consequence, I find that the approach by the First-tier Tribunal Judge to the letter from the DWP amounted to an error of law. In addition, it vitiated the rest of her decision and reasons as she did not go on to consider whether there were serious grounds of public policy or public security to justify his deportation, as required by regulation 21(3) of the EEA Regulations, if he was entitled to a permanent right of residence.

Conclusions

1. For all of these reasons I am satisfied that there were material errors of law in the First-tier Tribunal Judge's decision and reasons and that it should be set aside.
2. The decision of First-tier Tribunal Judge Griffith is set aside.
3. The appeal is remitted to the First-tier Tribunal for a *de novo* hearing before a First-tier Tribunal Judge other than First-tier Tribunal Judge Griffith.

Nadine Finch

Signed

Date 9 November 2015