



IAC-FH-CK-V1

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

Appeal Number: DA/01961/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 11 November 2015**

**Decision & Reasons Promulgated
On 1 February 2016**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**MS ALEKSANDRA KARPIUK
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms B Smith, Counsel instructed by Cale Solicitors

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Poland and her date of birth is 7 January 1985. She appealed against the decision of the respondent to deport her pursuant to the Immigration (European Economic Area) Regulations 2006. The decision was made on 16 October 2014. The appeal was dismissed by Judge of the First-tier Tribunal Bart-Stewart in a determination dated 15 April 2015 following a hearing on 25 February 2015. The judge rejected the conclusion in the pre-sentence report that there was a low risk of the appellant re-offending.

2. The appellant was granted leave to appeal by Judge of the First-tier Tribunal R A Cox on 5 May 2015. Thus the matter came before me.
3. At the hearing before me Mr Jarvis conceded that there was force in the appellant's argument in relation to the pre-sentence report and he went on to accept that this amounted to a material error. I was assisted by Mr Jarvis' pragmatism and Ms Smith's skeleton argument. I agree with both parties that the judge fell into error because she did not adequately reason her decision to depart from the conclusions reached by the probation officer and failed to consider the pre-sentence report in the context of the judge's sentencing remarks. Although the appellant's defence of duress was rejected by a jury, it was accepted by the sentencing judge that she had committed the offences under pressure.
5. The First-tier Tribunal misunderstood the appellant's involvement in the conspiracy to burgle offence. It appears from the judge's sentencing remarks that the appellant did not enter the premises and the judge misunderstood this at [52] of the determination.
6. I set aside the decision of the First-tier Tribunal. I heard representations from both parties in relation to venue. It was agreed that the findings of the First-tier Tribunal should be set aside and that none of them could be maintained in the light of the error. There is a need for a re-hearing which will involve extensive fact-finding and it was agreed that the matter should be remitted to the First-tier Tribunal for a *de novo* hearing.

Signed Joanna McWilliam

Date 19 November 2015

Upper Tribunal Judge McWilliam