



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00250/2015

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice, Belfast
On 16 May 2018

Decision & Reasons Promulgated
On 6 June 2018

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

WA

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Duffy, Senior Home Office Presenting Officer
For the Respondent: Ms Connolly, instructed by John Fahy & Co Solicitors

DECISION AND REASONS

1. I shall refer to the appellant as the respondent and the respondent as the appellant (as they appeared respectively before the First-tier Tribunal).
2. The appellant, WA, was born in 1972 and is a male citizen of Poland. He claims to have entered the United Kingdom in 2008. On 6 December 2014, the decision maker issued a decision to make a deportation order under Section 5(1) of the Immigration Act 1971. The decision was certified under Regulation 24AA of the Immigration (European Economic Area) Regulations 2006. The appellant applied for judicial review of the certification decision and was not removed from the United Kingdom.

He was subsequently granted a right of appeal and exercised this by appealing to Judge Hutchinson who, in a decision promulgated on 16 May 2017, allowed his appeal against the deportation decision. The Secretary of State now appeals, with permission, to the Upper Tribunal.

3. Granting permission in the Upper Tribunal, Judge Grubb wrote:

It is arguable, on the basis of the grounds, that the judge failed properly to consider the evidence and reached an unsustainable finding concerning the appellant's previous offending (particularly but not exclusively in the UK) including his propensity to offend in finding that there was not a genuine, present and sufficiently serious threat.

4. Before the Upper Tribunal, the parties agreed that the ground of appeal concerning the supplementary letter of the Secretary of State dated 3 September 2015 would not be pursued.

5. At [27], Judge Hutchinson wrote as follows:

I have considered that the last time the appellant was sentenced to a, considerable, period of custody was in Poland, in 2006 when he was sentenced to a lengthy term of 4 years and 6 months in custody for robbery. As already noted, the appellant has other prior serious convictions in Poland, for kidnapping in 2001 and burglary in 2002 and 2003, for which he received prison sentences of 18 months, 12 months and 18 months respectively 2005, for a lengthy term of 27 months for a number of offences including robbery. I have taken into consideration that the last such conviction was over a decade ago, which in my findings is a strong indicator that the appellant's conduct has changed.

6. I acknowledge that the judge's finding that the last offending in Poland had taken place over a decade ago indicating that "the appellant's conduct has changed" is, on initial reading, problematic. As the Secretary of State asserts in the grounds, that statement appears to ignore the significant criminal offending which the appellant has carried out whilst in the United Kingdom. Such offending would indicate that his conduct has not altered significantly. Whilst attractive, I reject that submission. If the decision is read as a whole, then it is clear that the judge has taken full account of the offending both in Poland and in the United Kingdom. Indeed, at [30], the judge wrote:

In assessing whether the appellant's conduct represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, I have also taken into consideration that the appellant has a history of repeat offending both in Poland and the UK, although as already noted, his convictions in the UK have been for significantly less serious offences.

7. At the Upper Tribunal hearing, Ms Connolly, who appeared for the appellant, suggested this might be in the nature of a "saving" paragraph. I agree. Given what Judge Hutchinson says at [30] and elsewhere in the decision, nothing turns upon the last sentence of [27].

8. At [31], Judge Hutchinson found that the most recent risk assessment indicated that the appellant did not pose a risk of serious harm to the public under the criteria used by the Probation Board for Northern Ireland. The appellant had been assessed as presenting a medium risk of reoffending. The judge stressed at [32] that the appellant's

offending in the UK had included convictions for crimes of violence. Ms Connolly described the judge's analysis at [33] that there was "lack of adequate evidence to demonstrate that [the appellant] is a threat to society and the terms required under the EEA Regulations" as "impeccable." I agree. Whilst the appellant's general conduct in terms of his criminality has not altered significantly since the offences he committed in Poland, the judge is correct to point out that his offending whilst in the United Kingdom is of a lesser degree albeit that he has committed offences of violence. The judge has avoided the common pitfall of conflating the seriousness of past offences with her assessment of whether the appellant represents a genuine, present and sufficiently serious risk. It is the personal conduct of the appellant assessed as at the date of hearing which is important, not simply adding up his criminal offences over a period of years. I agree also with Ms Connolly that the Secretary of State's submission that "even a slight risk of reoffending could constitute a genuine, present and sufficiently serious threat" is misconceived. Notwithstanding his serious past offending, the evidence before the Tribunal as at the date of hearing was that the appellant had been assessed as having a medium, not a high, risk of reoffending.

9. In conclusion, I agree with Ms Connolly that Judge Hutchinson has applied the correct test in determining the level of threat posed by this appellant at the time of the hearing before her. The judge has considered all relevant evidence and she has not taken into account evidence which is not relevant. Her analysis is thorough and conscientious and she has reached a conclusion which was available to her on the evidence. I find that there exists no reason for the Upper Tribunal to interfere with the judge's findings or her conclusion.

Notice of Decision

10. This appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 1 JUNE 2018

Upper Tribunal Judge Lane

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 1 JUNE 2018

Upper Tribunal Judge Lane