



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

Appeal Number: DA/00548/2019 (P)

THE IMMIGRATION ACTS

**Decision under Rule 34
Without a hearing, 28th May 2020**

**Decision & Reasons Promulgated
On 2nd June 2020**

Before

UPPER TRIBUNAL JUDGE COKER

Between

TOMASZ POPRAWKA

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. FtT Judge Devlin, for reasons set out in a decision promulgated on 12th February 2020, dismissed the appellant's appeal against the decision by the respondent, dated 3rd October 2019, to deport him in accordance with regulation 23(6)(b) and regulation 27 of the EEA Regulations. The decision was not certified in accordance with regulation 33. Permission to appeal was granted by FtT judge Bird on 11th March 2020. Directions for the further conduct of the appeal were sent on 30th April 2020 and, in the circumstances surrounding COVID 19, provision was made for the question of whether there was an error of law and if so whether the decision of the FtT Judge should be set aside, to be determined on the papers.
2. The appellant did not comply with directions and did not make an application for an extension of time; he did not respond to the respondent's submissions. He did not object to the decision whether there was an error of law

such that the decision is set aside being determined on the papers. The respondent made written submissions and did not object to the decision being reached on the papers.

3. I am satisfied that the submissions made on behalf of the respondent together with the papers before me are sufficient to enable me to be able to take a decision on whether there is an error of law in the decision of the FtT and if so whether the decision should be set aside, on the papers and without hearing oral submissions.
4. Permission to appeal was granted on the grounds that it was arguable the judge had
“failed to take into account the fact that [the appellant] had been in the UK for 22 years and further that his partner needed him.”

The permission to appeal goes on to state that

“although the judge considered the appellant’s convictions at great length, it is arguable that in finding that the appellant presented a present and sufficiently serious threat to the public, he failed to explain how domestic violence fell into this category (see judge’s comments at paragraph 146). Further the judge makes no reference to any evidence provided by the respondent to show such a threat.”

The appellant, in his grounds of appeal, also refers to his partner’s ill health and asserts the judge failed to take this into account in reaching his decision.

5. The appellant, a Polish citizen, claims to have arrived in the UK prior to 1998; Poland joined the EU on 1st May 2004 and thus he would not have been subject to immigration control thereafter. The judge concluded that the appellant had acquired permanent residence but had not been resident in the UK for a continuous period of at least 10 years prior to the date of decision. The judge, in reaching that conclusion set out the documentary evidence the appellant relied upon and his and his partners oral evidence. He analysed the wage records and identified to the appellant during evidence the ‘gaps’ in evidence. The judge refers to the appellant’s lack of credibility arising from the evidence he gave in connection with the offences for which he had been convicted and, looking at that evidence as a whole, the judge reached the conclusion that was reasonably open to him, that the appellant had not been resident in the UK for the period he claimed. There is no error of law by the judge in the findings made as to the appellant’s length of residence or how that impacts upon the level of protection from deportation.
6. The judge set out in detail the appellant’s partner’s ill health and the appellant’s submissions that his partner was a ‘protective’ feature that would prevent further offending. The judge notes the appellant assaulted his partner (5 times) and received convictions for those assaults. The judge also notes the appellant’s other convictions whilst under the influence of alcohol, including an offence of assaulting an emergency worker. When dealing with each offence the judge makes clear which of the respondent’s submissions with regard to that offence are rejected because of lack of evidence. The judge considers the offences holistically, their timing and the appellant’s evidence as to the

possibility of future offences, his apparent lack of contrition and/or remorse and his denial of some of the assaults. The judge noted that some of the assaults on his partner occurred whilst she was becoming more ill with the quite serious medical conditions she was suffering from and the medical investigations she was undergoing.

7. The judge considered the evidence as a whole for each offence and sentence, including the dates of the offences and that the offences had been occurring between January 2015 and July 2019. The judge, having set out the evidence in detail and his detailed reasoning underpinning his reasoning leading to his assessment of the seriousness of the risks, concluded that there was a genuine and serious risk that he would re-offend by committing common assault or battery on his partner and that his future behaviour may have more serious consequences. The judge set out clearly which offences he did not consider amounted to such serious risks.
8. The judge summarised the appellant's multiple offending and repeated criminal conduct over a relatively long period of time and that there had been an escalation in the offending. The judge identified that the restrictions on freedom of movement must be interpreted strictly and that the appellant's overall conduct must represent a genuine and present threat. The judge gave detailed reasons for reaching his conclusion that in this case, although each offence may not be of the gravity normally associated with such a stringent test, the appellant fell within that category as representing a sufficiently serious genuine and present threat affecting the fundamental interests of society.
9. In the grant of permission, the judge states it was arguable the judge had not explained how domestic violence fell into the category of a present and serious threat to society. This itself is difficult to understand. Domestic violence whilst directly impacting upon an individual has an established and known impact upon society in general through economic, financial and health care. It is a criminal offence not only because of the impact on an individual but also because of the impact on society and the acceptable norms of behaviour. The fact that an individual may not categorise an assault as violence does not mean it is not; nor does the fact that an individual victim describes an act of aggression as "not much" does not prevent it from being criminal behaviour. The FtT judge correctly characterised the appellant's incidents of domestic violence against his partner as being a threat to society in general.
10. The judge considered in detail and with lengthy citation of evidence and reasons whether the decision to deport complied with the principle of proportionality. The judge took fully into account and gave reasons for concluding that previous attempts to prevent further drink related offending had been unsuccessful and that the appellant had further assaulted his partner despite her being ill. The judge considered the appellant's age, his length of residence in the UK, his partner's health, her citizenship, his and her family members and their whereabouts, access to medical care, social and cultural integration and links with Poland. He considered the lack of evidence of rehabilitation.

11. The FtT judge, in a lengthy and detailed judgment identified, set out and reached reasoned and detailed conclusions. He did not omit to consider and take account of evidence before him and reached findings that were plainly open to him.
12. There is no error of law.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision; the decision of the FtT judge stands.

Jane Coker
Upper Tribunal Judge Coker

Date 28May 2020