



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

**Appeal Number:
DA/00040/2020 (P)**

THE IMMIGRATION ACTS

**Decided under rule 34
On 10 February 2021**

**Decision & Reasons Promulgated
On 25 February 2021**

**Before
UPPER TRIBUNAL JUDGE KEKIĆ**

**Between
T R
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Representation by way of written submissions:

For the Appellant: Mr M Poulter, Solicitor, Turpin and Miller Solicitors
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

Background

1. This appeal comes before me following the grant of permission to appeal by Upper Tribunal Judge Saffer on 13 January 2021 in respect the determination of First-tier Tribunal Judge Athwal,

promulgated on 17 December 2020 following a hearing at Birmingham on 21 October 2020.

2. The appellant is a Polish national born on 27 November 1988. He appeals against the deportation order made by the Secretary of State on 15 January 2020 following a criminal conviction on 12 October 2018 for two offences for which he received custodial sentences of three years and one year to be served concurrently.
3. The parties were issued directions by Upper Tribunal Judge Keith on 26 January 2021.

Discussion and Conclusions

4. By the time the matter came before me, the parties had reached an agreement on the disposal of the appeal and I have considered the submissions made.
5. I concur with the view of the parties that the First-tier Tribunal Judge erred in law in finding that the appellant had not acquired a permanent right of residence under reg. 15 of the EEA Regulations of 2016. The respondent concedes that the appellant has indeed acquired such a right, having resided lawfully in the UK for at least ten years. The appellant has also sought to dispute other findings of fact made by the judge and the respondent has not sought to disagree with the matters raised in the grounds of appeal when reaching agreement over the disposal of this appeal.
6. That being the case, the determination of the First-tier Tribunal cannot stand and it is set aside in its entirety except as a Record of Proceedings. Both parties agree that the matter is best determined before another judge of the First-tier Tribunal as fresh findings of fact shall have to be made.
7. The issues to be determined as agreed by the parties are :
 - (i) whether the appellant is entitled to enhanced protection on imperative grounds pursuant to reg. 27(4);
 - (ii) whether he presents a genuine present and sufficiently serious threat to one of the fundamental interests of society pursuant to reg. 27(5): and
 - (iii) whether his deportation is proportionate having regard to all the factors under reg. 27.
8. There is some disagreement over whether this should be an entirely remote, a hybrid or a fully face to face hearing. The appellant's objection to a remote hearing appears to be his domestic circumstances but that may be overcome if he is able to attend a location arranged by his solicitors where he may give video evidence without interruption from his child. However, I leave that decision for the First-tier Tribunal which will issue its own directions in due course.

Decision

9. The decision of the First-tier Tribunal contains an error of law which requires that it be set aside. The appeal is allowed to the extent that it is remitted to the First-tier Tribunal in Birmingham for a fresh decision to be made on all matters. The matter shall be heard by any First-tier Tribunal Judge except Judge Athwal.
10. Directions shall be issued by the First-tier Tribunal in due course.

Anonymity

11. I continue the order for anonymity made by the First-tier Tribunal.

Signed

R. Kekić

Upper Tribunal Judge

Date: 10 February 2021