Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: DA/00490/2019**
(V)

THE IMMIGRATION ACTS

Heard at : Field House	**Decision & Reasons Promulgated**
On : 7 May 2021	**On : 19 May 2021**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SYLWESTER MAZUR

Respondent

Representation:
For the Appellant: Mr S Kotas, Senior Home Office Presenting Officer
For the Respondent: Ms S Walker, instructed by Turpin & Miller LLP

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was Microsoft Teams. A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing.

2. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Mr Mazur's appeal against a decision to deport him from the United Kingdom pursuant to regulation 23(6)

(b) and regulation 27 of the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations").

3. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and Mr Mazur as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

4. The appellant is a citizen of Poland, born on 30 December 1979. He came to the United Kingdom in March 2009 and first came to the attention of the UK authorities on 25 December 2018 when he was arrested for the relevant offence. On 12 and 13 June 2019 he was convicted at Taunton Crown Court of two counts of wounding/inflicting grievous bodily harm without intent and having a blade/article which was sharply pointed in a public place. He was sentenced to two years' imprisonment.

5. On 20 June 2019 the appellant was served with a liability for deportation notice. He responded on 22 June 2019, claiming that he had no family in Poland as his parents had passed away, that he had always worked in the UK and had paid taxes and contributed to society and that he married his wife in the UK in December 2011 and had two daughters, born on 19 July 2010 and 18 February 2013. He provided an explanation for the incident leading to his conviction, claiming that he had been in an argument with some Polish men, all of whom had been drinking including himself, and had reacted violently when they were verbally abusing him. He claimed that that was the only time he had been arrested in the UK and it was totally out of character.

6. On 12 September 2019 the respondent made a decision to make a deportation order against the appellant. In that decision, the respondent accepted that the evidence produced by the appellant was sufficient to demonstrate that he had acquired the right to permanent residence under the EEA Regulations. However, the respondent did not accept that the appellant had been continuously resident in the UK for 10 years in accordance with the EEA Regulations, as his continuous residence was broken by his imprisonment before 10 years was completed. The respondent, having considered the nature of the appellant's offending, the serious injuries sustained by the two victims from knife wounds and the OASys report assessing him as a high risk of harm to known adults, concluded that his deportation was justified on serious grounds of public policy. The respondent noted the lack of documentary evidence showing that the appellant had addressed his issues with alcohol and considered that he therefore continued to pose a risk of harm to the public. The respondent considered that the appellant posed a genuine, present and sufficiently serious threat to the interests of public policy and that the decision to deport him was proportionate and in accordance with the EEA Regulations 2016. The respondent considered further that the appellant's deportation would not breach his Article 8 rights under the ECHR. Whilst the respondent accepted that the appellant had a genuine and subsisting relationship with his two daughters and his partner, none of whom had been shown to be British citizens, it was not accepted that it would be unduly harsh for them to live in Poland or to be separated from him upon his deportation. The exceptions to

deportation were not met on family or private life grounds under paragraphs 399(a) and (b) and paragraph 399A and there were no very compelling circumstances outweighing the public interest in deportation.

7. The appellant appealed against that decision and his appeal was heard in the First-tier Tribunal on 22 October 2020 by First-tier Tribunal Judge Loke. The appellant and his wife both gave evidence before the judge, by way of video-link, from which it was recorded that their relationship had broken down in June 2018 and they had separated and the appellant had gone to live with his niece next door, but Mrs Mazur would like them to be a family again. The judge noted that the appellant had been resident in the UK for ten years prior to the deportation decision, but he had been remanded into custody after being resident for nine years and nine months. The judge found that the appellant had been sufficiently integrated into the UK that the period of custody had not broken his integrative links. The judge accordingly found that the appellant was entitled to enhanced protection under the EEA Regulations and that there were not imperative grounds to indicate that he was a threat to public security. She accordingly allowed the appeal under the EEA Regulations.

8. The respondent sought permission to appeal to the Upper Tribunal on the grounds that the judge had erred by finding that the appellant's integrative links had not been broken simply on the basis of his length of residence in the UK and by failing to have regard to Schedule 1(2) of the EEA Regulations 2016, that she had failed to give adequate reasons for finding that the appellant was integrated into life in the UK when there was no finding of wider cultural integration beyond his own family and that she had failed to give adequate regard to the appellant's level of threat. It was asserted that the judge had erred by finding that the appellant had acquired enhanced protection against deportation.

9. Permission to appeal was granted in the First-tier Tribunal in a decision dated 24 November 2020, on the following basis:

> "It is arguable that the judge's assessment of the Appellant's integrative links was flawed if, as is arguable, the only basis for making the eventual finding was based without more upon the Appellant's length of time in the United Kingdom."

10. A Rule 24 response was filed on behalf of Mr Mazur opposing the Secretary of State's grounds and the matter then came before me for a hearing.

11. Both parties made submissions. Mr Kotas relied upon the grounds which he submitted raised a reasons challenge, namely the judge's failure to give sufficient reasons as to why the appellant was integrated into the UK. Ms Walker submitted that sufficient reasons were given and she referred to [24] and [25] of the judge's decision. With regard to the second ground of appeal, she submitted that the judge had carefully considered the appellant's threat level and had considered all relevant factors. Mr Kotas did not seek to respond further.

Discussion and findings

12. As I advised the parties at the hearing, I did not consider that Judge Loke had erred in law and I upheld her decision. My reasons for so doing are as follows.

13. The grant of permission, which was made on the ground of arguable flaws in the judge's assessment of the appellant's integrative links, was premised on the basis that the judge's conclusion in that regard relied only on the appellant's length of residence in the UK. That reflected the Secretary of State's first ground of appeal. However, it is clearly not the case that the judge relied only on the appellant's length of residence in the UK and neither is it the case that the judge failed to consider integration outside his own nationality and family, as the grounds suggest at [2].

14. Ms Walker properly relied on [24] and [25] of the decision in which the judge considered, in addition to the appellant's significant level of contact with his children and his co-parenting role, his employment in the UK prior to his imprisonment, the offer of employment upon his release and the number of educational courses undertaken in prison which she considered indicated a positive step to maintaining and strengthening his social and cultural integration into the UK. With respect to the appellant's employment, it is relevant to note the evidence before the judge, of continuous employment since arriving in the UK, as referred to at page 8 of appeal bundle and the following pages of payslips and P60s. There was no suggestion from that evidence that the appellant's employment was solely within the Polish community – on the contrary it is clear that he worked for English companies. The judge also had before her the independent social worker's report which, as she found at [25(c)], referred to an offer of employment upon release from prison in a cheese factory (paragraph 22.2, at S13 of the supplementary appeal bundle). Further, I note that the same report refers at paragraphs 10.4 and 24.1 to the family mixing with both English and Polish people. Accordingly there was considerable evidence before the judge to show that the appellant was integrated into the community and on the basis of that evidence she was perfectly entitled to conclude as she did.

15. Mr Kotas, in his submissions, posed the question how a person in prison could be considered to be integrated into life in the UK. However, the caselaw properly referred to by the judge at [19] to [21] envisaged such a situation and it is clear that the judge gave the matter full and proper consideration in line with those cases. Indeed there has been no challenge to the judge's directions in law and to her application of the law to the appellant's circumstances.

16. As for the judge's assessment of risk, there is again no merit in the challenge made in the grounds of appeal. As Ms Walker pointed out, the grant of permission did not refer to that ground, albeit there was no indication of it being excluded. The judge plainly gave careful consideration to the severity of the appellant's offence and to the level of threat he posed to the public, as

demonstrated at [26], [27] and [37]. The judge had full regard to the assessment of risk in the OASys report and accorded the assessment appropriate weight. She applied relevant authorities and reached a conclusion that was fully and properly open to her on the evidence.

17. Accordingly I agree with Ms Walker that the judge considered all relevant factors and provided full and cogent reasons for concluding as she did. I agree further that the Secretary of State's grounds are essentially little more than a disagreement with the judge's decision. Accordingly the judge was entitled to conclude that the appellant qualified for the enhanced level of protection. Mr Kotas helpfully agreed that if that was the Tribunal's conclusion then it was accepted that the appellant's offending did not justify expulsion.

18. For all of these reasons I find no errors of law in the judge's decision requiring it to be set aside and I uphold the decision.

DECISION

19. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to allow the appeal stands and the Secretary of State's appeal is dismissed.

Signed: S Kebede
Upper Tribunal Judge Kebede Dated: 7 May 2021