



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

Appeal number: DA/00009/2021
(UI-2021-000904)

THE IMMIGRATION ACTS

Heard at George House, Edinburgh
on 20 April 2022

Decisions & Reasons Promulgated
on 14 June 2022

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

PIOTR OSINSKI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

No appearance by or for the Appellant

For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. By a decision promulgated on 29 September 2021, FtT Judge Gillespie dismissed the appellant's appeal against deportation under the Immigration (EEA) Regulations 2016.
2. The appellant sought permission to appeal to the UT on grounds which may be briefly summarised as follows:
 - 1: complaints made in UK -
 - (i) taking account of irrelevant matters, namely two complaints of domestic abuse which did not result in convictions, only in an admonition for breach of bail conditions;

(ii) procedural unfairness, be declining to adjourn pending a decision, to be taken within 29 days, on whether to prosecute on a claim of domestic abuse, but taking that complaint into account;

(iii) inadequate reasons for finding that complaints to the police were made by the appellant's partner;

(iv) misconstruction of evidence on coming to adverse attention of Police Scotland, when that was only for non-disclosure of convictions in Poland; sentence in Poland not for 6 years, but for separate offences leading cumulatively to 6 years.

2 - previous convictions in Poland -

(i) failing to take account of appellant's explanation for non-disclosure of convictions in Poland;

(ii) appellant's conduct in UK should have been uncoupled from serious criminal misconduct in Poland - inadequate reasoning; and

(iii) finding of incipient criminal career in Scotland failed to take account of absence of significant convictions in UK since arriving in 2018 or 2019.

3. On 15 November 2021 Judge Martin granted permission, observing that the respondent at the hearing relied only on the Polish convictions, which were arguably inadequate to justify deportation, and that while not in the grounds, the Judge arguably erred by not considering article 8 of the ECHR.
4. In a rule 24 response the SSHD submits that the Judge may have erred over the length of the sentence in Poland, but the offences there were serious; the Judge was entitled to take account of allegations of domestic abuse and, "importantly", of failure to disclose convictions; and article 8 had not been pursued at the hearing. The response also says, "Evidence indicates that the appellant has left the UK."
5. The appellant was represented in the FtT, but he has no representatives on record in the UT.
6. On 31 March 2022, the UT issued notice of the hearing to take place on 20 April 2022.
7. Mr Mullen advised that the respondent's records show that the appellant left the UK by the Eurotunnel on 20 November 2021. The respondent has no trace of him since then.
8. The appellant has not been in touch with the UT since his appeal was filed to update his address or for any other purpose.
9. In those circumstances, the hearing proceeded in absence of the appellant or any representative.
10. The fact of the appellant leaving the UK does not result in abandonment of his appeal. However, the terms of the order against which he unsuccessfully appealed to the FtT require him to leave and prohibit his re-entry.
11. Mr Mullen submitted that the grounds showed no significant error in the decision, and that the appeal to the UT should be dismissed.
12. I indicated that the appeal would be dismissed.

13. The appellant served over 6 years imprisonment in Poland. The decision does become confused over whether that resulted from one conviction or from several, but that is not a distinction of any significance.
14. It is obvious that complaints to the police were most likely to stem from the appellant's partner; and even if there was another source, that makes no significant difference.
15. Failure to disclose convictions to the police was a plain fact, in which respect the grounds are only disagreement. The FtT did not err in law by declining to accept an obviously weak explanation.
16. The appellant advanced no case in terms of article 8 of the ECHR. Nor did he establish any facts by which he might rationally have been found to have a right to remain, based on article 8, as distinct from his position in terms of the regulations.
17. The grounds based on non-offending in the UK are over-optimistic. The appellant was convicted for breaching bail conditions, admittedly a minor matter resulting in admonition (but not in absolute discharge), and he had been here for only a brief time.
18. The SSHD had no information on whether a decision was made to prosecute the appellant, but nor has he provided any information about a decision to the contrary. Possibly, the matter was pre-empted by his departure from the country. In any event, no unfairness is shown to have resulted from absence of an adjournment.
19. The Judge may have strayed by giving weight to circumstances which had not yet resulted in convictions, in terms of ground 1(i), but not otherwise. Having left the country and failed to show how much eventual substance there was in the allegations of domestic abuse, the appellant has not shown either unfairness or error in point of law, such that the decision should be set aside.
20. The decision of the FtT shall stand.
21. No anonymity direction has been requested or made.

H Macleman

21 April 2022
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent” is that appearing on the covering letter or covering email.