



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

Appeal Number: DA/00348/2019

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 4<sup>th</sup> March 2022**

**Decision & Reasons  
Promulgated  
On 31 March 2022**

**Before**

**UPPER TRIBUNAL JUDGE BLUM  
DEPUTY UPPER TRIBUNAL JUDGE MALIK QC**

**Between**

**MR CEZARY MACIEJ TRAWCZYNSKI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Allison, Counsel

For the Respondent: Mr D Clarke, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of Judge of the First-tier Tribunal I Ross (“the judge”), promulgated on 23<sup>rd</sup> April 2020, in which he dismissed an appeal by Mr Cezary Trawczynski (“the appellant”) against a decision by the Secretary of State for the Home Department (“SSHD” or “respondent”) to make a deportation order against him under the Immigration (European Economic Area) Regulations 2016. That decision is dated 16<sup>th</sup> May 2019 but it was maintained in a subsequent decision dated 28<sup>th</sup> June 2019.

## **Background**

2. For reasons that will become apparent it is not necessary to dwell in detail on the history or the particular facts of this case. In summary, the appellant is a national of Poland who was born on 3<sup>rd</sup> January 1981. We were informed by Mr Allison of counsel, that the appellant entered the UK in September 2009. Before he entered the UK the appellant had been convicted of several offences in Poland relating to thefts. He received custodial sentences for these offences. The appellant has also committed criminal offences in the United Kingdom. In October 2017 he was convicted of possession of Class B drugs in respect of which he received a fine. More significantly, on 22<sup>nd</sup> March 2019 he was convicted of an offence of burglary of a dwelling house for which he received a custodial sentence of twelve months' imprisonment. It was this conviction that led to the making of that deportation order.
3. Under the Immigration (European Economic Area) Regulations 2016 the appellant had a right of appeal to the First-tier Tribunal which he exercised. On 22<sup>nd</sup> October 2019 Judge of the First-tier Tribunal Peart issued directions requiring the appellant to obtain HMRC records in support of his claim to have established a permanent right of residence (Regulation 15 of the Immigration (European Economic Area) Regulations 2016). This was material to the appeal as a person with a permanent right of residence can only be removed from the UK on "serious grounds of public policy and public security" (Regulation 27(3)). Subsequent substantive hearings listed for 25<sup>th</sup> November 2019 and 22 January 2020 were adjourned pending the outcome of the application to HMRC. The appellant was however required to resubmit the application and to provide further information. This was done on 3<sup>rd</sup> March 2020, shortly before the substantive hearing listed for 9<sup>th</sup> March 2020.

## **The judge's decision and the grounds of appeal**

4. At the outset of the First-tier Tribunal hearing the judge refused an application to adjourn pending the outcome of the re-submitted HMRC application. The judge made no mention of his adjournment application in his written decision. It is therefore not clear what reasoning he brought to bear in refusing that application. The refusal to adjourn the hearing constitutes the first ground of appeal to the Upper Tribunal.
5. The judge heard oral evidence from the appellant and from his partner who attended with their minor daughter. The appellant's partner claimed he (the appellant) had changed his whole outlook on life, that he cared a great deal for his daughter, that he had given up many things including his previous bad company and bad influences, and that, although he previously had a drug problem, he had been clean since his imprisonment in the United Kingdom. Although living separately the appellant and his partner were in the process of reconciliation. The appellant's partner stated that his behaviour had been affected by his history and by being in

prison, that he was now working from 8 a.m. to 4 p.m. and had significantly involved himself with his daughter's life.

6. The judge was not satisfied that the appellant had established a permanent right of residence. The documentary evidence of the appellant's exercise of Treaty rights was said to be spartan and there were gaps in the evidence relating to the appellant's employment. The judge was unable to rely on the appellant's evidence to fill these gaps because he had been a frequent drug user and was somebody who, in the past, had led a chaotic life.
7. The judge went on to consider whether the appellant's conduct represented a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society (Regulation 27(5)(c) of the Immigration (European Economic Area) Regulations 2016). The judge had regard to the index offence in the United Kingdom, to the circumstances of the appellant's previous offending, and to the sentencing judge's remarks.
8. At [35] and [36] the judge found that the appellant's conduct did constitute a genuine, present and sufficiently serious threat to the public, noting the absence of evidence of any formal risk assessment or probation report demonstrating low risk or rehabilitation. The judge proceeded to consider issues of proportionality but found that it was open to the appellant's partner and daughter to relocate to Poland. The appeal was dismissed, both under the Immigration (European Economic Area) Regulations 2016 and in respect of Article 8 ECHR. The second ground of appeal contends that the judge only focused on the absence of any formal steps taken by the appellant to address his drug use and behaviour. In so doing the judge failed to take into account other relevant evidence including, *inter alia*, evidence from the appellant's partner and evidence that the appellant had no access to drug related courses in prison.

### **The error of law hearing and our discussion**

9. At the commencement of the 'error of law' hearing Mr Clarke conceded that the judge had acted unfairly by refusing the adjournment. Mr Clarke took us through the chronology of relevant events and invited us to find that it had been unfair of the judge to have refused the adjournment in circumstances where an application to HMRC remained outstanding. Mr Clarke additionally accepted that, having regard to the appellant's history of employment in this country, as disclosed in the documents before the respondent when her decision was made and those provided to the First-tier Tribunal, that the appellant had in fact established a permanent right of residence.
10. Whilst we ventured some disquiet as to the materiality of the judge's refusal to adjourn the hearing, we are nevertheless satisfied that, on the particular facts of this case, the concession was properly made. More particularly, the acceptance that the appellant had in fact established a right of permanent residence under Regulation 15 of the Immigration

(European Economic Area) Regulations 2016 was one rationally open the respondent on the evidence before her.

11. We consequently find that the judge made a material error of law as his assessment of the public policy and public security requirements was taken on a mistaken basis and in respect of the wrong legal test (that the appellant was not someone with a permanent right of residence).
12. We would, in any event, have found that the judge's decision was unsustainable. This is because he relied exclusively on the absence of any official evidence when assessing whether the appellant's conduct posed a genuine, present and sufficiently serious threat to the public. In so doing he failed to consider clear evidence from the appellant's partner, recorded at [16], [18] and [19] of his decision (summarised at paragraph 5 above), that at least supported the appellant's claim to no longer pose a present or sufficiently serious threat. The appellant's partner claimed he had altered his outlook on life, that he was no longer exposed to bad influences, that his drugs problem was a thing of the past and he had been clean since being sent to prison, that he was working and was therefore a productive member of society who involved himself in family life, particularly in respect of his daughter. Whilst none of these factors, either individually or cumulatively, are in any way determinative of whether the appellant's conduct continued to represent a genuine, present and sufficiently serious threat to the fundamental interests of society, they are self-evidently relevant to that determination. Although the judge recorded this evidence, he did not engage with it. It was incumbent on him to do so. In our judgment he failed to take into account relevant considerations and failed to make any findings in respect of this material evidence. We are satisfied that this error was material as the judge may have reached a different conclusion if he did not fall into error.
13. In the circumstances, and given the passage of time and the need for further evidence to be heard in relation to the assessment of any risk that the appellant currently poses by reference to the "serious grounds" level of protection, we are satisfied that it is appropriate to remit the matter to the First-tier Tribunal for a de novo hearing to be heard by a judge other than Judge Ross.

## **Notice of Decision**

**The decision of the Judge of the First-tier Tribunal I Ross contains an error on a point of law requiring it to be set aside.**

**The case will be remitted back to the First-tier Tribunal for a de novo hearing before a judge other than Judge of the First-tier Tribunal I Ross.**

**No anonymity direction is made.**

D.Blum  
Signed

14 March 2022  
Date

Upper Tribunal Judge Blum