



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

**Appeal Number: DA/00343/2015**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 30<sup>th</sup> November 2015  
Given extempore**

**Decision & Reasons  
Promulgated  
On 11<sup>th</sup> December 2015**

**Before**

**Upper Tribunal Judge Chalkley**

**Between**

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

Appellant

**and**

**TOMASZ BRZEZINSKI  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr Tom Wilding, Home Office Presenting Officer  
For the Respondent: Ms L Hooper, of Counsel

**DECISION AND REASONS**

1. In this appeal the Secretary of State is the appellant and to avoid confusion I am going to refer to her throughout as being “the claimant”.
2. The respondent is a citizen of Poland who was born on 3<sup>rd</sup> October, 1988, and, I believe it is not in contention that he entered the United Kingdom in 1994, aged 5 to join his mother. He was granted indefinite leave to

remain as the dependant of his mother on 21<sup>st</sup> June, 2001. His mother had married a gentleman who was settled in the United Kingdom.

3. Between 2006 and 2014, the respondent has acquired nineteen criminal convictions for a total of 34 offences. On 31<sup>st</sup> January, 2012, the respondent was convicted of an offence whilst a community order was in force and on 16<sup>th</sup> March, 2012 was served with a notice of liability to deportation. He responded by questionnaire on 22<sup>nd</sup> March, 2012, and on further consideration by the claimant it was considered that the respondent did not meet the criteria for deportation at that time and so, on 9<sup>th</sup> May, 2012, he was issued with a warning letter.
4. Unfortunately, on 18<sup>th</sup> September, 2014, the respondent was convicted at Blackfriars Crown Court of conspiracy to steal and sentenced to 21 months' imprisonment. A new notice of liability to deportation was served on him on 8<sup>th</sup> June, 2015, and on 24<sup>th</sup> June, 2015, the respondent was served with a signed deportation order dated 22<sup>nd</sup> June, 2015, which was made for reasons set out in a letter dated 4<sup>th</sup> June and served with a notice of immigration decision under the 2006 Regulations dated 22<sup>nd</sup> June, 2015.
5. The respondent appealed to the First-tier Tribunal and his appeal was heard by First-tier Tribunal Judge Jane Plumptre, sitting at Hatton Cross on 23<sup>rd</sup> September, 2015. She allowed the respondent's appeal, but in doing so erred by incorrectly applying the imperative grounds test.
6. Addressing me on behalf of the claimant, Mr Wilding suggested that this *may* be an imperative grounds case, under Regulation 21(4) Immigration (EEA) Regulations 2006, but before deciding, it is necessary to look back to see if someone has ten years' continuous period of residence in the United Kingdom without a break for imprisonment, so that one looks for a period of ten years before imprisonment and then periods following imprisonment and those periods may be taken with relevant consideration into account by the national authorities responsible for applying Regulation 28, as part of an overall assessment required for determining whether the intervening link previously forged by the individual with the host member state, has been broken and thus deciding whether enhanced protection will be granted. Unfortunately, in this determination, nowhere is there any engagement with the exercise of assessing whether the appellant lost any integrating links. The judge has simply concluded that because the respondent has been in the United Kingdom since 1994, the respondent is entitled to the high level of protection of imperative grounds of public policy.
7. Mr Wilding confirmed that although Poland did not accede to the European Economic Union until May 2004, this does not prevent the respondent being able to rely on his earlier residence in the United Kingdom from 1999, given the provisions of paragraph 6 and Schedule 4 of the Regulations; as a dependant of his mother the respondent was in a category which would have fallen within the scope of Article 7 of the Free Movement Directive, had it applied at the time.

8. He submitted that there needed for a full assessment as to whether or not the respondent lost the intervening links during the periods of his employment. This judge failed to engage with that at all.
9. Ms Hooper submitted that the judge did not quote but did follow the *MG (Secretary of State for the Home Department v MG (Judgment of the court) [2014] EUECJ C-400/12)* test. It is agreed that the relevant initial period is that since 1994, when the respondent entered the United Kingdom aged 5. Periods of imprisonment can of course in principle break continuity of residence. Taken as a whole, when one reads paragraph 48 of the determination onwards it is clear that the judge applied the correct principles. She lists the relevant factors at paragraph 48 and having been alert to and applied the relevant principles, has not erred. The claimant's own policy refers to the same factors as those to which the judge made reference in paragraph 48. She urged me to find that there was no error of law on the part of the judge and to uphold the determination.
10. Responding on behalf of the claimant, Mr Wilding suggested that at paragraph 48 the judge has simply recited the factors relevant in Regulation 8 cases, but has not reached a reasoned conclusion as to whether or not the appellant was integrated given the series of periods during which he has been in prison which had the potential to interrupt integrating links he may previously have forged. He has been in and out of prison since 2011 and an assessment as to his integration still needs to be made. There has been a complete failure. He invited me to remit the appeal for hearing afresh and suggested that no findings could be preserved.
11. Helpfully, Ms Hooper agreed that in the event I found an error of law, the appeal should be remitted for hearing afresh by a judge other than First-tier Tribunal Judge Jane Plumptre.
12. Having carefully listened to the helpful submissions made by the Presenting Officer and Counsel I have concluded that the determination cannot stand. There has not been an assessment undertaken of whether the periods of imprisonment imposed on the respondent had interrupted the integrating links previously forged by him since he initially entered the United Kingdom at the age of 5. I remit the matter for hearing afresh by a judge other than First-tier Tribunal Judge Plumptre.
13. Mr Wilding suggested that it was certainly possible that having undertaken the assessment properly a different judge may reach the same conclusion. However, this judge simply failed to correctly undertake that assessment.

### **Upper Tribunal Judge Chalkley**