



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DA/00463/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 23<sup>rd</sup> August 2019

Decision & Reasons Promulgated  
On 18<sup>th</sup> September 2019

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

KAMIL [S]  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms N Bustani, instructed by Sterling Lawyers Limited

For the Respondent: Ms A Fijiwala, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Poland born on 4 August 1987. He appeals against the decision of First-tier Tribunal Judge Widdup, promulgated on 29 May 2019, dismissing his appeal against deportation pursuant to Regulations 23(6)(b) and 27 of the Immigration (EEA) Regulations 2016.
2. The Appellant entered the UK in 2007 and has four convictions for drink driving. Between 5 September 2011 and 18 May 2018, the Appellant was convicted on six occasions of fifteen offences. He received three custodial sentences. On 13 January

2016 he was sentenced to 90 days' imprisonment for driving while unfit through drink or drugs and while uninsured. On 28 January 2016 he was sentenced to 70 days' imprisonment for driving with excess alcohol, driving while uninsured and whilst disqualified. On 18 May 2018 he was sentenced to 120 days' imprisonment for possession of an offensive weapon and for driving while disqualified and while uninsured. The deportation order was made on 5 July 2018.

### The Judge's Findings

3. The judge made the following relevant findings.

- “62. In assessing the period of continuous residence I must count back from the date of the deportation order which was on 4/7/2018.
63. By Regulation 3(3) EEA Regulations 2016 the continuity of residence is broken when the person serves a sentence of imprisonment. In this case the Appellant received three sentences of imprisonment which totalled 280 days or 40 weeks. His first period of imprisonment started on 28 January 2016.
64. I have taken into account the case of Warsame [2016] EWCA Civ 16. In the light of that authority the ten year period of residence must be continuous counting back from 4/7/2018 but excluding periods of imprisonment. The Appellant will still be entitled to the highest level of protection if he has acquired ten years' continuous residence before his imprisonment.
65. In this case he was first imprisoned on 28/1/2016. The Respondent accepts that he lived in the UK from 2007. It follows therefore the Appellant does not have ten years' continuous residence before 28/1/2016. If he had established ten years' continuous residence before his imprisonment it would also be necessary for him to show that integrating links with the UK had not been broken by his imprisonment.
66. However, by March 2015 the Appellant had acquired rights of permanent residence and by Regulation 27(3) he is therefore entitled to the medium level of protection namely the deportation order must be justified on serious grounds of public policy and public security. The decision must also be taken in accordance with the principles set out in 27(5).”

4. At paragraph 74(vi) the judge found:

“It is difficult to assess the Appellant's social and cultural integration in the UK. Schedule 1 paragraph 2 refers to the need for a significant degree of wider cultural and societal integration before a person may be regarded as integrated in the UK. His drink drive convictions, together with the observations in the pre-sentence report, suggest that he had little understanding of how seriously the public view such offences. On the other hand I also take into account that the Appellant's exercise of treaty rights for so long, and his English language skills, means that there must have been a degree of integration. I also take into account that his evidence in the second witness statement suggests that the Appellant may be developing some insight into the seriousness of his past conduct.”

5. Permission to appeal was granted by Upper Tribunal Judge Grubb on 16 July 2019 on the following grounds:

“It is arguable that the judge erred in reaching his decision that the appellant (as an EEA national) was not entitled to the highest level of protection against expulsion in reg 27(4)(a), namely on (sic) grounds of public security. In assessing whether the Appellant had the requisite ten year residence prior to the relevant decision (taken by the judge as 4 July 2018), the judge arguably erred in law by failing to consider whether the Appellant had forged the necessary integrative links over the nine year period prior to imprisonment and whether the periods of imprisonment (total of 123 days actual imprisonment) were sufficient to break the continuity of residence (in excess of ten years) at the date of the relevant decision. The judge’s reasoning in paragraphs 63 to 65 is arguably wrong. It was not necessary for him to establish ten years’ continuous residence prior to his imprisonment. The relevant authority is not Warsame [2016] EWCA Civ 16 but the CJEU’s decision in B v Land Baden-Württemberg; SSHD v Vomero [2018] Imm AR 1145 which regs 3(3)(a) and 3(4) seek to enshrine in UK law.”

### Relevant Law

6. B v Land Baden-Württemberg; SSHD v Vomero, at paragraph 83, the Court held:

“In the light of all the foregoing, the answer to the first three questions in case C-316/16 is that Article 28(3)(a) of the Directive must be interpreted as meaning that, in the case of a Union citizen who is serving a custodial sentence and against whom an expulsion decision is adopted, the condition of having ‘resided in the host member state for the previous ten years’ laid down in that provision may be satisfied where an overall assessment of the person’s situation, taking into account all the relevant aspects, leads to the conclusion that, notwithstanding that detention, the integrative links between the person concerned and the host member state have not been broken. Those aspects include, inter alia, the strength of the integrative links forged with the host member state before the detention of the person concerned, the nature of the offence that resulted in the period of detention imposed, the circumstances in which that offence was committed and the conduct of the person concerned throughout the period of detention.”

### Submissions

7. Ms Bustani relied on the four grounds of appeal upon which permission was granted. In relation to ground 1, she submitted that the Appellant entered the UK in 2007 and it was accepted that he had acquired permanent residence. At the time of the expulsion decision (5 July 2018) the Appellant had been residing in the UK for more than eleven years. Within that time, he had spent 123 days in prison. The issue was whether his integrative links had been broken by relatively short periods of time in custody.
8. Ms Bustani submitted the judge had erred in applying Warsame because in that case the Appellant had not accrued the relevant ten years at the time the expulsion

decision was made. The judge had erred in the Appellant's case because he found that the prison sentence imposed in January 2016 meant that the Appellant did not have ten years' continuous residence. The judge failed to apply European case law and, on the facts of this case, the period of imprisonment did not break continuity.

9. In the alternative, (ground 2) Ms Bustani submitted that the judge erred in concluding that the Appellant's offending behaviour was sufficient to justify deportation on serious grounds of public policy. The threshold was still a high one. Ms Bustani accepted that the Appellant's four convictions for driving under the influence of alcohol met the low threshold of grounds of public policy. However, she submitted that serious grounds of public policy was a high threshold and the offences committed by the Appellant, even taken cumulatively, were insufficient to meet that threshold. The Respondent's own guidance referred to offences which were violent, sexual, gun or drug-related and that, in most cases, the length of the sentences provided a strong indication of the severity of the offence. A period of imprisonment, especially a life sentence with a particular long tariff, is confirmation from the sentencing court as to the danger posed by the individual where the individual is held as the highest category of prisoner. The Appellant's offending behaviour did not fall within the Respondent's guidance. He had not been convicted of a violent or sexual offence and his prison sentence was at the lower end of the scale. It was even insufficient to trigger automatic deportation. The judge had failed to appreciate the elevated threshold.
10. Ms Bustani submitted the judge's assessment of reoffending failed to refer to the probation officer's report (ground 3) and the Appellant's level of integration (ground 4). The judge failed to appreciate that the Appellant had been in the UK since 2007; he had not been back to Poland; his parents and siblings lived in the UK; and he had worked before and after his imprisonment. He had strong integrating links to which the judge failed to attach weight. There was insufficient consideration of the Appellant's integrative links in the UK and his lack of links to Poland.
11. For the Respondent, Ms Fijiwala accepted the Appellant's imprisonment in January 2016 did not break his ten years' continuous residence. The judge's misdirection, however, was not material because the judge did consider integrating links at paragraph 74(vi). The judge found that it was difficult to assess the Appellant's social and cultural integration because the Appellant had not accepted the seriousness of his offending behaviour, notwithstanding he was exercising treaty rights and could speak English. Ms Fijiwala accepted that the probation report was not referred to but the judge, in any event, accepted the Appellant had made progress. In this case the Appellant was a repeat offender and had committed the same offence on four occasions. She relied on the judge's findings at paragraphs 76 and 77:

"76. I find that offences of driving with excess alcohol presented an extremely serious threat to the safety of other road users. The risk of reoffending which I have identified means that the public continues to be at risk from someone who has now committed this offence on four separate occasions.

77. I take into account that the right of free movement should not be restricted save where appropriate under the Rules. The question is whether the threshold required by Regulation 27(3) is met in this case. The offending in this case is serious. There is little if any mitigation as demonstrated by the contents of the pre-sentence report. There is a serious aggravating feature in this case in that in a period of four years the Appellant committed four offences of driving with excess alcohol. He also drove without insurance. Two of those offences were committed within days of each other. In view of the risk of repetition of offences which pose a clear risk to the public I find without hesitation that there are serious grounds of public policy and public security and that the threshold is therefore met.”
12. Ms Fijiwala submitted the judge therefore took into account all relevant matters and his finding that there were serious grounds of public policy and public security was open to him on the evidence before him. There was no material error of law in failing to apply enhanced protection because the judge found that the Appellant’s integrating links were insufficient.
13. In relation to ground 2 the judge was well aware of the threshold at paragraph 73 and had explained at paragraph 77 why this case was serious. Although the last offence for drink driving was committed three years ago, the judge explained why the Appellant was still at risk of reoffending. He properly dealt with the level of integration and took into account all relevant factors. The Appellant lived in Poland up to the age of 19. However, he had no family life in the UK because his partner and children lived in Latvia. The judge properly considered integration and balanced all factors such that there was no material error of law in the decision to dismiss the appeal under the EEA Regulations.
14. Ms Bustani submitted that the judge considered integration after deciding that the Appellant was not entitled to enhanced protection because he did not have ten years’ continuous residence. His conclusions on integration did not inform his previous decision. The Appellant’s last offence in May 2018 was not a drink driving offence. The Appellant stated that he no longer had a drink problem and his last alcohol related conviction was in January 2016. The judge failed to appreciate this situation at paragraphs 76 and 77. The Respondent’s own guidance gave examples of the types of offences which amounted to serious grounds of public policy. Even the Appellant’s repeated offences did not meet that threshold.

### **Conclusion and Reasons**

15. It is accepted that the Appellant came to the UK in 2007 and left Poland at the age of 19. It is accepted that he had been residing in the UK for more than eleven years at the date of the decision to deport him on 5 July 2018. It is accepted that the Appellant has permanent residence under the Immigration (EEA) Regulations 2016. The issue before the judge was whether the Appellant’s period of imprisonment (123 days) was sufficient to break his integrative links with the UK such that he was not

entitled to enhanced protection under Regulation 27(4): “A relevant decision may not be taken except on imperative grounds of public security....”

16. Having considered the judge’s findings at paragraph 62 to 66, I am satisfied that the judge made an error of law. Firstly, he only considers the totality of the sentences of imprisonment, 280 days, not the actual time spent in prison of 123 days. Secondly, he finds that the period of imprisonment in January 2016 was sufficient to break the continuity of the ten years’ residence. It is clear from the case of Baden-Württemberg and Vomero that there must be an assessment of the Appellant’s integration in the UK when deciding whether he is entitled to enhanced protection. The judge quite clearly does not perform that assessment in finding that he was not so entitled. The judge’s conclusions at paragraph 74 were not sufficient to show that the Appellant’s period of imprisonment of 123 days in eleven years broke his integrating links such that he had not acquired ten years’ continuous residence.
17. I find that the judge erred in law in concluding that the Appellant was not entitled to enhanced protection, namely imperative grounds of public policy or public security. I set aside the judge’s decision in that respect and remake it.
18. The Appellant has been residing in the UK since 2007 and has been exercising Treaty rights. He has been sentenced to imprisonment for serious offences of drink driving and has served three custodial sentences. However, taking all factors into account, I find that the Appellant’s integrative links with the UK have not been broken by his detention of 123 days.
19. In coming to that conclusion, I have taken into account the Appellant’s period of residence, his offending behaviour, the current evidence that he may be developing some insight into the seriousness of his past conduct and the circumstances in which the offence was committed. The last offence for drink driving was committed in 2016 and whilst the last offence in 2018 shows a blatant disregard for the law, taken together, the Appellant’s offending behaviour and his period of imprisonment is not sufficient to break his integrative links with the UK such that it could not be said that he had not acquired ten years’ continuous residence in the UK.
20. Accordingly, I find that the Appellant is entitled to enhanced protection and the test to be applied is whether there were imperative grounds of public policy to deport him. The Appellant’s criminal convictions are not sufficiently serious to meet that threshold and I therefore allow his appeal under the Immigration (EEA) Regulations 2016.
21. In relation to grounds 2 to 4, I am not satisfied that the judge failed to take into account the probation report, given his conclusion at paragraph 74(vi) nor am I persuaded that he did not appreciate the nature and pattern of offending. The judge took into account all relevant factors and his conclusion at paragraph 77 there were serious grounds of public policy justifying the Appellant’s deportation was open to

him on the evidence before him. However, given that the Appellant succeeds on ground 1, it is unnecessary to deal with the remaining grounds.

22. In summary, I find that the judge erred in law. I set aside his decision promulgated on 29 May 2019 and remake it. The Appellant's appeal is allowed.

**Notice of Decision**

**The Appellant's appeal is allowed under the Immigration (EEA) Regulations 2016.**

**No anonymity direction is made.**

*J Frances*

Signed

Date: 9 September 2019

Upper Tribunal Judge Frances