



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-001645
DA/00012/2021**

THE IMMIGRATION ACTS

**Heard at Field House
On the 15 October 2022**

**Decision & Reasons Promulgated
On the 28 November 2022**

Before

**MRS JUSTICE THORNTON
UPPER TRIBUNAL JUDGE BRUCE**

Between

**Mikolaj Porazewski
(no anonymity direction made)**

Appellant

And

Secretary of State for the Home Department

Respondent

**For the Appellant: Ms N. Bustani, Counsel instructed by TMC Solicitors
For the Respondent: Ms Willocks-Briscoe, Senior Home Office
Presenting Officer**

DECISION AND REASONS

1. The Appellant is a national of Poland born in 1983. He appeals with permission against the decision of the First-tier Tribunal (Judge Freer) to dismiss his appeal under the Immigration (European Economic Area) Regulations 2016.

2. The Appellant has lived in the UK since 2008 when he was, as a ten year old child, brought here by his mother. The background to the appeal before the First-tier Tribunal was that he now faced deportation action because he was, on the 16th November 2018, convicted of three counts of conspiracy to supply Class A drugs, possession of an offensive weapon and assault occasioning grievous bodily harm. He was sentenced to concurrent sentences totalling 54 months' imprisonment.
3. The first task for the First-tier Tribunal was to determine the correct legal framework. As it noted, under Regulation 27 of the Immigration (European Economic Area) Regulations 2016 there are three tiers of protection open to persons facing deportation under those regulations. Which one of those tiers applied to the Appellant was therefore an important first step in the decision. The Tribunal recognises this at its paragraph 12 where it notes that regulation 27(4)(a) provides that where an EEA national has been resident in the UK for a continuous period of at least 10 years they cannot be deported except on "imperative grounds of public security".
4. As it happens the Tribunal did not find it necessary to conduct its own evaluation of whether the Appellant attracted that particular level of protection, the highest available under the regulations, since that much was expressly accepted by the Respondent. At the hearing the Appellant produced a letter from his primary school which confirmed his presence in the UK at least from the start of the school term on the 3rd September 2008. The letter itself was accepted as genuine by the Respondent's representative on the day [see paragraph 7 of the decision] and acknowledged in his submissions which are recorded in the decision [at paragraph 40] as follows: "if I accept the letter from Park Academy, the Appellant has been here ten clear years and only imperative grounds are available". To reinforce that position the Presenting Officer on the day directed their submissions to arguing that the Appellant's offending met that very high test. Before us Ms Willocks-Briscoe accepted that this had been the concession made before Judge Freer, and declined to ask us to depart from it, as the Rule 24 response had suggested that she might.
5. It is therefore difficult to understand why the First-tier Tribunal directed itself, under the heading 'Findings: the Appellant's Credibility and Findings of Fact', at its paragraph 57, as follows:

"I now turn to the legal tests and analysis. I have to consider if:

 - (i) The threat posed is a realistic one;
 - (ii) Does it currently exist (including consideration of professional views on rehabilitation); and
 - (iii) Is it sufficiently serious so as to threaten at least one of the fundamental interests of society"
6. We are satisfied that this was a misdirection, suggestive of the Tribunal assessing the case on the basis that the Appellant benefitted

only from the basic, lowest level of protection from expulsion. Although Ms Willocks-Briscoe is right to say that the “imperative grounds” test is referred to elsewhere in the decision, notably at the Tribunal’s paragraphs 12 and 19, it is not discernible in the reasoning that follows paragraph 57 that the Tribunal anywhere considered whether the “imperative grounds” test was in fact met. Most concerningly the global conclusion expressed at paragraph 71 appears consistent with paragraph 57, and serves to indicate that it was the lowest level of protection which the Tribunal had in mind:

“I find that there is shown by the evidence, to the balance of probability, a real and present threat to more than one fundamental interest of society, presented by this Appellant”.

7. Thus we are satisfied that the decision cannot be saved by the fact that the correct test is referred to elsewhere.
8. It follows that we need not deal with Ms Bustani’s second ground, which deals with the way that the Tribunal approached the related question of proportionality. We set the decision of the Tribunal aside in its entirety so that it may be remade applying the correct legal framework to the now accepted facts that the Appellant had, prior to the decision to deport, accrued ten years’ residence in accordance with the Immigration (European Economic Area) Regulations 2016.

Decisions

9. The decision of the First-tier Tribunal is set aside.
10. The decision is to be remade *de novo* in the First-tier Tribunal by a judge other than Judge Freer.
11. There is no order for anonymity. No application was made for such an order and on the facts we see no reason for one to be made.



Upper Tribunal Judge Bruce
15th

November 2022