



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-006609

First-tier Tribunal No: HU/55268/2021  
IA/13187/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 4<sup>th</sup> June 2024**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**MM  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Rashid instructed by ukmigrationlawyers.co.uk  
For the Respondent: Mr Thompson, a Senior Home Office Presenting Officer.

**Heard at Phoenix House (Bradford) on 8 May 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The procedural history of this appeal is set out in my earlier directions dated 15 February 2024, issued as a result of the failure of the appellant's representative which led to a hearing which should have taken place in Bradford on 9 February 2024 being unable to proceed.
2. At [4 - 5] of the February 2024 document it is written:

3. The Tribunal is grateful to Mr Rashid for his assistance in enabling it to be established exactly what has gone wrong in relation to the preparation and conduct of this appeal. It is fair to say that at the conclusion of the hearing the reasons advanced in the earlier emails for why the case could not proceed by the appellant's solicitors were unsatisfactory as a result of lacking in detail, in failing to provide a proper explanation for the problems, or why the earlier direction had not been complied with, which materially contributed to the decision to refuse the adjournment request.

4. The issues that arose included:

- a. Mr Rashid purportedly being instructed by the appellant's solicitors to appear even though they had no instructions from the appellant to represent him in these proceedings. They therefore did not have the authority to instruct counsel. The matter was fortunately resolved by Mr Rashid on the day by his contacting the solicitors and receiving the required confirmation.
- b. It not having been made clear in the earlier adjournment applications that the source of the funding for legal representatives was the sponsor herself, who is in receipt of public funds, and it being the fact the legal fees are being paid from such funds that prevented the same being made available earlier, although such claim is unsupported by documentary evidence.
- c. Although the determination of Upper Tribunal Judge Jackson was promulgated following a hearing on the 28 September 2023, it was not sent to the parties until 10 November 2023. Notice of hearing was received on 22 January 2024 only allowing 17 days between that date and the date of the relisted hearing, not the 21 days as per Judge Jackson's directions. Although this appears to be less than the 21 days maximum period provided by Judge Jackson, that was a back stop date not the only date, and it is clear that no attempt had been made by the appellant's representatives to comply with the directions themselves or through the appellant/sponsor during any of the period provided.
- d. Mr Rashid had not been provided with all the relevant documents required to enable him to properly represent the appellant. Of particular importance was the failure of the appellant's representatives to provide him with a copy of the social worker's report of Nikki Austin, dated 29th June 2022, and other letters of support. Mr Rashid was asked to establish from the solicitors why he was without such documents which he advised the tribunal was as a result of an admitted oversight by the appellant's representatives who had not checked that all the documents that should have been sent to him were sent.
- e. When exploring whether the Tribunal could proceed with the information it had, the issue was raised whether the Secretary of State accepted that the appellant had not reoffended since he had been returned to Poland. The appellant had sought an earlier adjournment to enable him to obtain evidence from Poland that he has not reoffended. Mr Diwnycz indicated he would not have the authority to concede that the appellant had not reoffended without the required evidence. Mr Rashid submitted that this was one of the main issues in the appeal for which the adjournment was sought to enable the appellant to adduce the evidence. Although it is claimed there have been communication problems with the appellant in Poland, a satisfactory explanation for why this evidence was not obtained earlier has not been provided.

3. As a result of the representative's failures specific directions were given in the hope that matters could be put in order. Those directions are in the following terms:

9. The following directions therefore apply to future conduct of this appeal:

- a. The hearing shall be adjourned to the next open date after 4 May 2024, to be relisted before Upper Tribunal Judge Hanson sitting at Bradford, time estimate three hours, subject to the availability of Mr Rashid and Mr Diwnycz.

- b. Any further additional evidence must be filed with the Tribunal and served upon the Secretary of State's representatives directly no later than 4 PM 5 April 2024, the extended period being allowed as a result of the appellant being in Poland, possibility of communication issues, and the sanction that the Upper Tribunal shall not adjourn the future hearing if evidence has not been provided in accordance with these directions, nor admit evidence produced after this date unless permission has been given to do so. If the appellant is unable to comply with this direction an on-notice application must be made explaining the delay, the person responsible, reasons for the same, relevance of the evidence to the issues at large, anticipated date for when the evidence will be available, accompanied by the required fee, which will be referred to Upper Tribunal Judge Hanson to be considered on the papers. Such application to be made before the expiry of the time limit provided above.
  - c. Witness statements shall stand as the evidence in chief of the maker who, if they are in the UK or have been given permission to appear remotely, shall attend the hearing for the purposes of cross-examination re-examination only.
  - d. The appellant is reminded that any documents not accompanied by a certified translation, if written in a language other than English, shall not be admitted.
  - e. No interpreter having been requested none shall be provided by the Upper Tribunal.
  - f. Any application for the appellant to be permitted to give evidence directly from Poland must be submitted, in appropriate form in accordance with the guidance provided by the Upper Tribunal, no later than 4 PM 12 April 2024.
1. In accordance with guidance provided, the directions are written in clear unambiguous terms, providing that additional evidence was to be filed no later than 4 PM 5 April 2024 with an extended period being allowed for a number of reasons, including a sanction that the Upper Tribunal shall not adjourn the future hearing if evidence has not been provided in accordance with the directions, nor admit evidence produced after this date unless permission has been given to do so. There are also specific directions in relation to what is required if the appellant is unable to comply with the directions within (b) above.
2. In addition to these directions, in light of the failure of the appellant's representatives, whose conduct was found to be primarily responsible for the reason the previous hearing could not proceed, a nominal wasted costs order was made against them in the sum of £100. The solicitors therefore had a clear indication that their conduct was not acceptable, that it would not be tolerated, and that the directions provided for sanctions in the event of default.
3. Notwithstanding all the above, no bundle was filed with the Upper Tribunal or sent to the Secretary of State's representatives in accordance with the directions.
4. At the start of the current hearing Mr Rashid advised the Tribunal that there was in fact another bundle of evidence from the appellant that had been sent to him, although neither me nor Mr Thompson had seen it. The advocates were therefore sent out to see if they could agree which documents were now said to be available, to see if they could agree a bundle, and whether those documents would enable the Tribunal to proceed. Having seen the additional documents Mr Thompson advised that if the evidence was allowed in, he would have to seek an adjournment to enable checks to be made upon material contained therein that had not been previously disclosed.
5. Mr Rashid confirmed his recollection of the hearing on 9 February 2024 and the fact we could not proceed for the reason stated. It was accepted it had been made clear in court that there was not likely to be any further adjournment if documents were not provided. Mr Rashid also stated he had to chase those instructing him to ascertain whether there were any further documents and to receive the updated bundle, the day before this hearing. He initially only received an automated email without being called back. He therefore contacted the

solicitors on the morning of the hearing, 8 March 2024, resulting in a telephone conversation at approximately 9:22 AM in which the solicitors confirmed there were additional documents which they sent to Mr Rashid.

6. Mr Rashid also confirmed that having spoken to the sponsor, who attended the hearing, she had said there were other documents that should have been included in the bundle that were missing. These included medical evidence, a birth certificate for her and the appellant's new baby, and a witness statement from the appellant, all of which had been provided in good time. Information provided suggested the documents had been given to the solicitor in March 2024 by the sponsor.
7. As Mr Rashid was unaware of these documents, he was given time to speak to the solicitors. He returned to court at 11:28AM having spoken to the solicitor who confirmed there had been two emails from the sponsor of 21 March and 9 April 2014 enclosing documents that had not been sent on.
8. There was nothing before me to indicate the solicitors had made any satisfactory comment upon this issue and their failure directly, and specifically why they had not filed the evidence in accordance with the directions.
9. When Mr Rashid was asked why the solicitors had failed to comply with the directions to file evidence, when it was clear they had sufficient time to have filed the same, he stated it was a failure of the caseworker to undertake her duty and that not complying with the order of the court was a breach of a duty of care both in respect of the duty owed to the client in not passing the information on and of their professional obligations.
10. Mr Rashid accepted the solicitor should have conducted the litigation efficiently but submitted the best interests of the children could be at the forefront of my mind.
11. Mr Rashid submitted the missing documents were crucial to the appellant's case, although no satisfactory explanation was given for why they should be so. Mr Rashid was also asked whether, if the evidence was excluded, the appellant could make a fresh application to revoke the deportation order based upon material that it was now claimed was made available. No satisfactory explanation was provided for why he could not other than reference to the fact the case had been ongoing since 2019, the issue of delay and costs, but these are not determinative.
12. I find the conduct of the appellant's solicitors has, quite frankly, been disgraceful. Complying with directions of any court or tribunal is not a matter of choice. As a result of their earlier failures specific directions were given setting out clearly what would happen if there was a default. As the solicitors failed to comply with the directions it was necessary for them to apply for relief from sanctions.
13. I accept the evidence of the sponsor that some of the evidence that had not been disclosed had been provided to the solicitors prior to 9 February hearing. In an email sent on 21 March 2024 the sponsor provided criminal record information from Poland claiming the appellant had not offended since he had been deported to Poland, accompanied by certified translation, a boarding pass for the sponsor confirming she had visited the appellant in Poland, and a death certificate for his mother who it was known was unwell. An email of 9 April was also sent containing the appellant's son's witness statement, although he was not in attendance to give any evidence today.
14. Rule 7(2) of The Tribunal Procedure (Upper Tribunal) Rules 2008 reads:

**Failure to comply with rules etc.**

**7.—(1)** An irregularity resulting from a failure to comply with any requirement in these Rules, a practice direction or a direction, does not of itself render void the proceedings or any step taken in the proceedings.

(2) If a party has failed to comply with a requirement in these Rules, a practice direction or a direction, the Upper Tribunal may take such action as it considers just, which may include—

- (a) waiving the requirement;
- (b) requiring the failure to be remedied;
- (c) exercising its power under rule 8 (striking out a party's case); or
- (d) except in **[F1a mental health case, an asylum case or an immigration case]**, restricting a party's participation in the proceedings.

(3) Paragraph (4) applies where the First-tier Tribunal has referred to the Upper Tribunal a failure by a person to comply with a requirement imposed by the First-tier Tribunal—

- (a) to attend at any place for the purpose of giving evidence;
- (b) otherwise to make themselves available to give evidence;
- (c) to swear an oath in connection with the giving of evidence;
- (d) to give evidence as a witness;
- (e) to produce a document; or
- (f) to facilitate the inspection of a document or any other thing (including any premises).

(4) The Upper Tribunal may exercise its power under section 25 of the 2007 Act (supplementary powers of the Upper Tribunal) in relation to such non-compliance as if the requirement had been imposed by the Upper Tribunal.

15. Section 25 of the Tribunal's, Courts and Enforcement Act 2007 reads:

**25 Supplementary powers of Upper Tribunal**

- (1) In relation to the matters mentioned in subsection (2), the Upper Tribunal—
  - (a) has, in England and Wales or in Northern Ireland, the same powers, rights, privileges and authority as the High Court, and
  - (b) has, in Scotland, the same powers, rights, privileges and authority as the Court of Session.
- (2) The matters are—
  - (a) the attendance and examination of witnesses,
  - (b) the production and inspection of documents, and
  - (c) all other matters incidental to the Upper Tribunal's functions.
- (3) Subsection (1) shall not be taken—
  - (a) to limit any power to make Tribunal Procedure Rules;
  - (b) to be limited by anything in Tribunal Procedure Rules other than an express limitation.
- (4) A power, right, privilege or authority conferred in a territory by subsection (1) is available for purposes of proceedings in the Upper Tribunal that take place outside that territory (as well as for purposes of proceedings in the tribunal that take place within that territory).

16. The powers of the High Court in its civil jurisdiction are to be found in the Civil Procedure Rules and related Practice Directions as well as relevant decided authorities. The rules relating to evidence are to be found in part 32. Paragraph 32.1 reads:

Power of court to control evidence

### 32.1

- (1) The court may control the evidence by giving directions as to –
    - (a) the issues on which it requires evidence;
    - (b) the nature of the evidence which it requires to decide those issues; and
    - (c) the way in which the evidence is to be placed before the court.
  - (2) The court may use its power under this rule to exclude evidence that would otherwise be admissible.
  - (3) The court may limit cross-examination.
17. The Upper Tribunal therefore possesses the power to exclude evidence that would otherwise be admissible. Whether it will be just to exclude evidence depends upon the circumstances of the individual case.
18. A similar question was recently considered by the Upper Tribunal in *Secretary of State for the Home Department v Maleci (non-admission of late evidence)* [2024] UKUT 00028 in which a panel composed of Mr Justice Dove, President of the Upper Tribunal, Mr Ockelton Vice President of the Upper Tribunal, and Upper Tribunal Judge Blum held:
- (1) The First-tier Tribunal is empowered to issue directions regulating the filing and service of evidence in proceedings which provide sanctions in the event of non-compliance that lead to the exclusion of evidence if the Tribunal considers this to be ‘just’. Parties must appreciate that if they fail to comply with directions, they run the risk that the Tribunal will refuse to consider evidence that is not provided in accordance with those directions.
  - (2) What is ‘just’ will depend on the particular circumstances of each case but will be informed by the principles set out in *SSHD v SS (Congo) and Others* [2015] EWCA Civ 387.
19. The guidance from the Court of Appeal in *SS (Congo)* is to be found at [93 – 95] in which it is written:
- The legal principles*
93. It is common ground that the governing principles are those laid down in *R (Hysaj) v Secretary of State for the Home Department* [2014] EWCA Civ 1633, in which this court held that applications for extension of time for filing a notice of appeal should be approached in the same way as applications for relief from sanction under CPR rule 3.9 and in particular that the principles to be derived from *Mitchell v News Group Newspapers Ltd* [2013] EWCA Civ 1537, [2014] 1 WLR 795 and *Denton v TH White Ltd* [2014] EWCA Civ 906, [2014] 1 WLR 3926 apply to them. According to the *Denton* restatement of the *Mitchell* guidance, in particular at paras. [24]-[38] of the judgment of the Master of the Rolls and Vos LJ in *Denton*, a judge should address an application for relief from sanction in three stages, as follows:
- i) The first stage is to identify and assess the seriousness or significance of the failure to comply with the rules. The focus should be on whether the breach has been serious or significant. If a judge concludes that a breach is not serious or significant, then relief will usually be granted and it will usually be unnecessary to spend much time on the second or third stages; but if the judge decides that the breach is serious or significant, then the second and third stages assume greater importance.
  - ii) The second stage is to consider why the failure occurred, that is to say whether there is a good reason for it. It was stated in *Mitchell* (at para. [41]) that if there is a good reason for the default, the court will be likely to decide that relief should be granted. The important point made in *Denton* was that if there is a serious or

significant breach and *no* good reason for the breach, this does not mean that the application for relief will automatically fail. It is necessary in every case to move to the third stage.

iii) The third stage is to evaluate all the circumstances of the case, so as to enable the court to deal justly with the application. The two factors specifically mentioned in CPR rule 3.9 are of particular importance and should be given particular weight. They are (a) the need for litigation to be conducted efficiently and at proportionate cost, and (b) the need to enforce compliance with rules, practice directions and court orders. As stated in para. [35] of the judgment in *Denton*:

"Thus, the court must, in considering all the circumstances of the case so as to enable it to deal with the application justly, give particular weight to these two important factors. In doing so, it will take account of the seriousness and significance of the breach (which has been assessed at the first stage) and any explanation (which has been considered at the second stage). The more serious or significant the breach the less likely it is that relief will be granted unless there is good reason for it ...."

94. The court in *Hysaj* added some points of particular relevance to the present context. At para. [41] of his judgment, Moore-Bick LJ (with whom the other members of the court agreed) said that it would be quite wrong to construct a special regime for applications for extensions of time in public law cases, but he accepted that "the importance of the issues to the public at large is a factor that the court can properly take into account when it comes at stage three of the decision-making process to evaluate all the circumstances of the case". At para. [42] he rejected the contention that the court could construct a special rule for public authorities, which "have a responsibility to adhere to the rules just as much as any other litigants". He added that the nature of the proceedings and the identification of the responsibility for delay are factors which it may be appropriate to take into account at the third stage.

95. Another point concerned the merits of the substantive appeal, as to which Moore-Bick LJ said this at para. [46]:

"If applications for extensions of time are allowed to develop into disputes about the merits of the substantive appeal, they will occupy a great deal of time and lead to the parties' incurring substantial costs. In most cases the merits of the appeal will have little to do with whether it is appropriate to grant an extension of time. Only in those cases where the court can see without much investigation that the grounds of appeal are either very strong or very weak will the merits have a significant part to play when it comes to balancing the various factors that have to be considered at stage three of the process. In most cases the court should decline to embark on an investigation of the merits and firmly discourage argument directed to them ....."

20. Considering the step-by-step approach set out at [73] I find as follows: in relation to the seriousness or significance of the failure to comply with the directions I find the breach has been both serious and significant. In relation to the second stage, why the failure occurred, no satisfactory explanation or good reason for the default has been advanced to the Tribunal sufficient to warrant relief being granted.

21. I accept, however, as found in *Denton* that even though there is a serious and significant breach with no good reason for the breach, that does not mean the application for relief will automatically fail as it is necessary to move on to the third part of the assessment process.

22. That requires an evaluation of all the circumstances of the case so as to enable the tribunal to deal justly with the application. The overriding objective in the Upper Tribunal procedure rules provides:

**Overriding objective and parties' obligation to co-operate with the Upper Tribunal**

**2.—**(1) The overriding objective of these Rules is to enable the Upper Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
- (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- (d) using any special expertise of the Upper Tribunal effectively; and
- (e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Upper Tribunal must seek to give effect to the overriding objective when it—

- (a) exercises any power under these Rules; or
- (b) interprets any rule or practice direction.

(4) Parties must—

- (a) help the Upper Tribunal to further the overriding objective; and
- (b) co-operate with the Upper Tribunal generally.

23. The actions of the appellant's solicitors do not show they have dealt with the case professionally, fairly or in accordance with the overriding objectives. They have created delay incompatible with the proper consideration of the issues in the appeal, have failed to help the Upper Tribunal to further the overriding objective, and in failing to comply with a specific direction have failed to cooperate with the Upper Tribunal generally.
24. Provision was made for an application to be made in time to extend the time for the filing of the additional documents, but no such application was made. It was not made out the appellant will be unable to make a fresh application if the new evidence was excluded. Indeed, it was accepted that he could although the issue of delay and costs was raised. It has not been made out that either of these issues would make it unreasonable or disproportionate to expect a fresh application to be made, if required. It is also important to note that if the evidence is admitted this hearing will, again, be lost. Yet again time and facilities allocated to the Upper Tribunal as a visiting jurisdiction in the particular hearing centre will be lost, in addition to the cost of a judge and administrative staff, and the services of the Presenting Officer, who are all ready to proceed.
25. It was suggested that a way forward was for a direction to be given for a senior partner of the firm in question to attend to show cause why they should not be referred to the Solicitors Regulation Authority for breach of their professional obligation to honour directions and failure to protect their client's interests, but even if the Upper Tribunal issued such a direction today's hearing would be lost.
26. In light of all the information considered in the round, I find it the appellant has not established that it is appropriate in all the circumstances to grant relief from the specific sanction contained in the directions and that as a result the evidence that had not been seen by the Tribunal shall not be admitted and remains excluded. That decision was announced in court.
27. Mr Rashid was given time to consider his position in light of the decision not to grant relief from sanctions and to speak to the sponsor further, if necessary, but in light of a clear indication that the case will proceed today.



28. Mr Rashid returned to the court at 12:18 PM. He confirmed that he had contacted the solicitors by email, I believe a Ms Campbell, who had now informed him that the caseworker responsible for the appeal, a Ms Ahmed, had sent a supplementary bundle into the Upper Tribunal on 5 April 2024, the last date provided for in the directions, but that it had been rejected on 8 April although they claimed not to have been told about the rejection or to be unable to locate any notification. Mr Rashid indicated the solicitors had told him that they did not know why the application had been rejected.
29. The simple point is that even though the solicitors may have sent a bundle of additional documents using the CE filing system employed by the Upper Tribunal this was clearly rejected as they were not on record as solicitors acting for the appellant.
30. Although Mr Rashid tried to claim that the fact there had been correspondence sent to the solicitor's address meant it was accepted, they were on record such submission has no merit on the facts.
31. Although UK migration lawyers were originally on the record on behalf of the appellant, on 21 September 2023 at 10:01 hours Miss Amara Ahmed, described as a solicitor in the email, wrote:

We are writing to inform you that we are no longer representing [MM] in respect of his appeal matter. Please amend your records accordingly.

Please contact [the sponsor] directly on: \*\*\*\*\*@hotmail.com.
32. The error of law hearing occurred before Upper Tribunal Judge Jackson sitting at Field House on 27 September 2023 who directed that an email is sent to the sponsor with a copy of the notice of hearing and remote hearing details requesting confirmation of the appellant's address and contact details. That Email, sent on 11:01 21 -09-2023, read:

Dear Sir/Madam,

We have been informed that you are no longer represented by UK Migration Lawyers. Please could you inform the Upper Tribunal if you have new Representatives as soon as possible.

Kind Regards,  
**Pavithra Sabu**  
**Listings Officer**
33. No information was received by the Upper Tribunal from the appellant, sponsor, or elsewhere, providing a different address for service which therefore remains that recorded on the tribunal records as it had been prior to the solicitors withdrawing their representation. Continued use of that address did not confirm the status of a representative on record upon UK Migration Lawyers but was treated as a post box address to enable proper service of notices of hearing etc in accordance with the Procedure Rules.
34. There is still nothing officially from UK Migration Lawyers placing themselves on record as acting for the appellant. The rejection by the Tribunal Administration of the bundle which was sent on 5 April was therefore procedurally correct.
35. The claim by the solicitors that they had no notice that the bundle had been rejected is not made out. When an electronic filing is rejected, notification is given both on the sender's portal that the filing had been rejected and, also, by an email confirming rejection being sent to the party concerned. Though the solicitors claim not to have received or seen an email that does not mean it was not sent. I find on the material available that is more likely than not that it was as this is standard procedure.
36. There are two other issues that arise which are relevant to the decision made following Mr Rashid providing this information. The first is that even if the

solicitors were unaware that the bundle sent on 5 April had been rejected on 8 April 2024, those dates being important as 5 April was a Friday and 8 April the following Monday and therefore consecutive working days, the sponsor's evidence is that further documents were sent by way of an email on 9 April 2024 to the solicitors, which one would have anticipated would have produced a reaction in the mind of the solicitor concerned. One would have expected they would have made reference to their file and taken steps to file that evidence with an explanation for why it was out of time. As that does not appear to have been a matter over which they had any control at that point, it is likely that the evidence would have been accepted. That procedure would have required reference to the electronic case management system where they would have noted that the bundle sent on 5 April had been rejected enabling them to take remedial action. It appears however, they did nothing. As noted above, the evidence provided on 9 April was not included in any material that was submitted by the solicitors.

37. The second issue is far simpler. The direction given following the lost hearing in February 2024 was that the representatives were required to serve the Secretary of State's representatives directly with any additional evidence. There is no evidence they took any steps to serve the Secretary of State directly. Mr Rashid submitted that the solicitors may have thought that sending the bundle to the Tribunal by way of the CE filing system would mean it would be automatically sent to the Presenting Officers unit but there is no justification for such a belief, as the Tribunal's case management system is not set up to facilitate service in such a way. I have not been referred to any guidance that would show there was any justification in a belief that serving the Upper Tribunal would automatically mean the respondent's representatives were also served. There is no such guidance. The direction also specifically provided for direct service on the Secretary of State not indirect service via a third party. The solicitor's failure to comply with this particular aspect of the directions is absolute. I make a finding of fact there is no evidence the Secretary of State was served with the evidence in accordance with the directions and, specifically, that there is no evidence of any attempt to serve the Secretary of State directly in accordance with the directions.
38. No explanation has been provided for why the solicitors did not undertake regular review of so file to ensure that the bundle that they claim was submitted had been properly filed. Sending the document electronically, even if received by the Upper Tribunal, does not automatically equate to valid service. In this case there was no such valid service as the solicitors were not on record.
39. Having given further consideration to the information that had been communicated by Mr Rashid I advised that it did not change the decision previously made that there was no relief from sanctions and that the evidence remained excluded.
40. Mr Rashid was therefore given extra time to explain the procedure to the sponsor as a result of which the substantive hearing, which was initially called on at 10:40 AM was finally able to start at 1: 04 PM, a further indication of the absolute waste of time and costs incurred as a result of the solicitors failure.

#### The substantive hearing

41. A number of the documents which it was claimed had not been disclosed did not, arguably, make any difference to the appeal. It was known the appellant's mother was ill with cancer and so the fact she has passed away was not a surprise. The fact the sponsor had been out to see the appellant in Poland is noted, but she had done this previously. Similarly, as they are in a relationship as husband and wife together, the fact they have had another child also a neutral issue.

42. The certified translation of the document from Poland confirming the appellant has no criminal convictions is something on which no specific finding can be made, as that evidence is excluded, has not been seen by me, and is a document which if it had been admitted would have resulted in the substantive hearing being adjourned again.
43. The sponsor confirmed that the statement from the appellant's son, sent on 9 April 2023 expressing how he missed his dad and wanted his dad to return to be with the family, according to the sponsor, was also not admitted but the son had not attended the tribunal in any event and so could not be asked about what he had written or cross-examined by Mr Thompson. The weight that could be attached to that evidence, other than the fact it was accepted a child will miss their father and would want their father to be living back home within the family unit, would be considerably reduced.
44. It is not disputed that the appellant is a Polish national born on 19 May 1990 who arrived in the UK on 29 July 1999 accompanied by his parents. His father claimed asylum on arrival with the appellant as a dependent although such claim was refused, and a subsequent appeal dismissed. The appellant was granted indefinite leave to remain as part of the exercise undertaken by the Home Office to clear the backlog of cases on 9 March 2004.
45. On 1 May 2004 Poland became a Member State of the EU.
46. On 23 July 2005 the appellant was reprimanded for destroying or damaging property. On 29 April 2010 he was cautioned for possession of cannabis. On 26 April 2014, at Sheffield Crown Court, he was convicted of robbery and on 27 March 2014 was sentenced to 2 years imprisonment. He did not appeal against either his conviction or sentence.
47. Deportation proceedings were commenced and on 28 August 2014 the appellant signed a disclaimer indicating he wished to return to Poland. The deportation order was signed on 10 October 2014 against which he did not appeal, and he was deported to Poland on 17 October 2014.
48. Had the appellant remained in Poland his chances of succeeding in an application to revoke the deportation order may have succeeded in the first instance. But he did not. In May 2016 the appellant re-entered the UK where he remained for three days, and again in May 2019. In September 2019 he was served with a notice of removal from the United Kingdom on the basis he had entered in breach of the deportation order. On 12 November 2019 a request was made to revoke the deportation order resulting a decision from the Secretary of State issued on 5 August 2021 refusing to revoke the deportation order. It is the appeal against that decision which is under consideration.
49. It is not disputed before me that the appellant returned to Poland voluntarily, where he is at the current time.
50. The refusal letter refers to regulation 34(3) of the Immigration (EEA) Regulations 2016 which provides: "*a person who is subject to deportation or exclusion order may apply to the Secretary of State to have it revoked on the basis that there has been a material change in the circumstances that justified the making of the order*"
51. Regulation 34 (4) states: "*an application under paragraph (3) must set out the material change in circumstances relied upon by the applicant may only be made whilst the applicant is outside the United Kingdom*".
52. Having considered the reasons relied upon by the appellant the Secretary of State concluded there remained a strong justification on grounds of public policy, public security or public health, in accordance with regulation 27, in maintaining the deportation order signed against the appellant on 8 October 2014, which was a decision that complied with the principle of proportionality and is in accordance with Regulation 27.

53. Regulation 34 (5) states of the Secretary of State must revoke the deportation order if the Secretary of State considers that the criteria for making such an order are no longer satisfied. It is the appellant's case that they are not.
54. The appellant cannot argue that he was unaware that he should not have entered the United Kingdom in 2016 or 2019, and I find any submission to that effect without merit. The decision to make a deportation order, which was served upon the appellant, reads:

On 26 February 2014 at Sheffield Crown Court, you were convicted of robbery. The Secretary of State has considered the offence of which you have been convicted and your conduct, in accordance with regulation 21 of the Immigration (European Economic Area) Regulations 2006. She is satisfied that you would pose a genuine, present and sufficiently serious threat to the interests of public policy if you were to be allowed to remain in the United Kingdom and that your deportation is justified under regulation 21. She has therefore decided under regulation 19(3)(b) that you should be removed and an order made in accordance with regulation 24(3), requiring you to leave the United Kingdom and prohibiting you from re-entering while the order is in force. For the purpose of the order section 3(5)(a) of the Immigration Act 1971 will apply.

(My emphasis)

55. The current provisions relating to exclusion or removal from the United Kingdom of a person to whom the 2016 Regulations apply, are to be found in regulation 23, which makes reference to regulation 27. That reads:

**27.—** (1) In this regulation, a “relevant decision” means an EEA decision taken on the grounds of public policy, public security or public health.

(2) A relevant decision may not be taken to serve economic ends.

(3) A relevant decision may not be taken in respect of a person with a right of permanent residence under regulation 15 except on serious grounds of public policy and public security.

(4) A relevant decision may not be taken except on imperative grounds of public security in respect of an EEA national who—

(a) has a right of permanent residence under regulation 15 and who has resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision; or

(b) is under the age of 18, unless the relevant decision is in the best interests of the person concerned, as provided for in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989(1).

(5) The public policy and public security requirements of the United Kingdom include restricting rights otherwise conferred by these Regulations in order to protect the fundamental interests of society, and where a relevant decision is taken on grounds of public policy or public security it must also be taken in accordance with the following principles—

(a) the decision must comply with the principle of proportionality;

(b) the decision must be based exclusively on the personal conduct of the person concerned;

(c) the personal conduct of the person must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, taking into account past conduct of the person and that the threat does not need to be imminent;

(d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;

(e) a person's previous criminal convictions do not in themselves justify the decision;

(f) the decision may be taken on preventative grounds, even in the absence of a previous criminal conviction, provided the grounds are specific to the person.

(6) Before taking a relevant decision on the grounds of public policy and public security in relation to a person ("P") who is resident in the United Kingdom, the decision maker must take account of considerations such as the age, state of health, family and economic situation of P, P's length of residence in the United Kingdom, P's social and cultural integration into the United Kingdom and the extent of P's links with P's country of origin.

(7) In the case of a relevant decision taken on grounds of public health—

(a) a disease that does not have epidemic potential as defined by the relevant instruments of the World Health Organisation or is not a disease listed in Schedule 1 to the Health Protection (Notification) Regulations 2010; or

(b) if the person concerned is in the United Kingdom, any disease occurring after the three month period beginning on the date on which the person arrived in the United Kingdom, does not constitute grounds for the decision.

(8) A court or tribunal considering whether the requirements of this regulation are met must (in particular) have regard to the considerations contained in Schedule 1 (considerations of public policy, public security and the fundamental interests of society etc.

56. In her witness statement dated 10 March 2022 the sponsor confirmed that she is married to the appellant, and that they have three children together.

57. The sponsor has indefinite leave to remain in the UK which has been her home since 1999.

58. The sponsor comments upon the proposal that she and the children could relocate to Poland claiming that that is not an option.

59. Their third child, E, was born on 15 August 2021. The sponsor confirms raising three children as a single parent has been difficult. There are other immediate family members who live in UK and who are either British or with settled status. In relation to the appellant's circumstances, it is written:

18. I accept that [MM] does have previous convictions and has made mistakes. However, I genuinely believe that MM has learnt from his mistakes and he feels extreme remorse especially being away from us all. Nothing is more important to MM than his children and family. I would not continue to support him if I believed in any way that MM has not changed as I have to think about my children first and foremost. They are my priority and it is in all his children's best interests to have MM around them.

60. The sponsor states that in the past they did not seek legal advice which was why the appellant signed the disclaimer to return to Poland. They had never had the services of an immigration lawyer before submitting the representations to revoke the deportation order. The sponsor claims the appellant was advised by officials in the prison that getting a lawyer would not help him, that he is dyslexic, and that funds were also an issue.

61. At [22] the sponsor writes:

22. The respondent is concerned about the impact MM would have on the wider British public and the risk he imposes. MM is not a risk to anyone. He risks losing me, the kids and his life in the UK and I know that he would not go on to commit further crime in the UK if he were permitted to reside here.

62. The sponsor did not dispute in her oral evidence that the appellant had returned to the UK on two occasions in breach of the deportation order. She also accepted that when he was encountered by the police he gave a false name.

63. The sponsor's evidence was that the appellant was not present at the birth of his daughter on 16 December 2015 even though the appellant's name appears on the birth certificate as the father.
64. In relation to the time the appellant came to the UK in breach of the deportation order it was stated that his mother was ill and was diagnosed with cancer shortly before the appellant left the UK in 2019. It was claimed that was the last time the appellant was in the UK.
65. The sponsor was questioned by Mr Thompson about her claim that the appellant was a different person than he was previously and her claims that she would stop him committing any crime, and why she had not done so previously, to which the sponsor stated that things were happening at the time the offences were committed, including the appellant having no family in the UK, which does not apply now. She stated he was much younger than he is now, that he is a lot older and is different from what he was in his youth, and that he had learned his lesson. The sponsor stated it had been very difficult for him and that he had changed.
66. When the sponsor was asked why, if he had changed, he came to the UK in the breach of the deportation order, she stated it was because he had found out his mother who was in the UK was ill at that time.
67. In relation to the visit in 2019 the sponsor stated there was a need for some form of certificate and that he found out later his mother had cancer.
68. In answer to questions put in re-examination, the sponsor honestly confirmed that when the appellant came in 2016 his mother had not been diagnosed as suffering from cancer and that he just wanted to come and see her.
69. In reply to the questions that were asked concerning use of a false identity, the sponsor confirmed there had been no problems or difficulties with the Home Office in relation to this issue. She also confirmed the appellant had re-entered the UK through immigration control and had never experienced any problems in re-entering the UK.
70. I find having assessed the sponsor that she is telling the truth. She has been consistent in her evidence, and although she wants the appellant to be able to return to live with the family in Sheffield, openly confirmed that the visit in 2016 was not connected with the appellant's mother's diagnosis of cancer which occurred later. The sponsor accepts the appellant should not have re-entered the UK on the two occasions he did and genuinely believes that he no longer poses a threat to a fundamental interest of the UK sufficient to warrant the deportation order continuing.
71. I find I can put weight upon the evidence of the sponsor in relation to these issues.
72. I have also considered the evidence from the independent social worker, and the evidence from other sources, with the required degree of anxious scrutiny.
73. I have also taken into account Mr Thompson submissions. He relied upon the reasons for refusal letter, the fact the appellant has been deported in accordance with the regulations, and that he was not entitled to any higher level of protection at the time the deportation order was made as he had not been shown to have been exercising treaty rights for a continuous five year period.
74. It was submitted that in relation to the application to revoke the deportation order it was for the appellant to prove there had been a material change in circumstances and to show that he did not pose a genuine, serious and credible threat.
75. Mr Thompson accepted the last breach of the deportation order occurred in 2019 but that the sentencing remarks referred to the seriousness of the offence, and that it was relevant when assessing schedule 1 of the 2016 Regulations that

there had been a breach of the immigration laws of the UK based upon the appellant's entry in breach of the deportation order.

76. Mr Thompson properly accepted there was no evidence that the appellant had been convicted of offences for breach of the deportation order but says the evidence was of a clear breach. Although concern was raised in relation to the time the appellant had been in the UK there was no evidence to contradict the sponsor's claim to which sufficient weight could be given.
77. In relation to the appellant's name appearing on a birth certificate in February 2016, in relation to married or civil partner parents, either can register the birth on their own and can include both parents' details if they were married or in a civil partnership when the baby was born or conceived. The requirement for both parents to sign the birth register together or the need for evidence of parental responsibility applies to unmarried parents. As it is not made out the appellant and sponsor were not married at the time the birth was registered this is a neutral factor and does not support the Secretary of State's case per se.
78. I accept Mr Thompson's submissions that the reason the appellant gave a false name when he was encountered is that he knew he should not be in the UK. I understand, however, his desire to see his mother knowing she was ill.
79. Mr Thompson referred to a letter from the school showing the appellant had been added as an emergency contact but he is the father of the children and that does not necessarily mean he is present in the UK.
80. The core of Mr Thompson's argument is that the appellant has been convicted and that since conviction and deportation he has come back into the UK which is indicative of the fact he continues to pose a real risk.
81. Mr Rashid submitted, in reply, that there is no evidence before me today that the appellant had committed any further offences and that the last offence was some years ago.
82. Mr Rashid referred to the basis on which the deportation order was made, but the order was not challenged, is a valid deportation order, and this is not an appeal against the making of the original order but an application that it should be revoked.
83. I accept that when the offence was committed the appellant was a young man of 19 or 20 years of age who is now in his 30's with children, who recently lost his mother with whom he was close.
84. I accept the evidence suggests that when the appellant came in 2019 his mother's cancer had flared up and she had been given six months to live and that he entered using a passport in his own name. Mr Rashid accepted the appellant had changed his surname on one occasion but stated his Polish passport had both names and that the appellant had not attempted to conceal his identity. It was accepted he had given a different name, a false name to the police, but that no action was taken in relation to the same.
85. Mr Rashid submitted that the false name was given to conceal the fact the appellant should not be in UK rather than to hide the offence of robbery, but they are one and the same thing and related issues. I find the evidence shows that the giving of a false name was a deliberate act.
86. In relation to the current situation, there is evidence showing the impact of the appellant's deportation on his children and I accept it is in the children's best interest you he should be able to return to the UK to live with them in a secure family unit.
87. I accept that re-entering in breach of the deportation is a serious matter. I accept that giving a false name to the police is also a serious matter. I note on both occasions that the appellant entered UK he left voluntarily and that no formal steps were taken by the prosecuting authorities to bring criminal proceedings against the appellant for any of these actions.

88. I accept as well-founded Mr Thompson's submission that the appellant had shown blatant disregard for immigration control in the UK. That is not, however, the core issue which is whether he had shown there was no longer any real risk of a breach of one of the fundamental interests of society.
89. The evidence before me, including that of the sponsor on which I can place weight, shows that over 10 years have passed since the appellant offended. The evidence does not show that he has committed any further offences or that there is any evidence to establish a real risk that he will reoffend if allowed to re-enter the UK lawfully. I accept the evidence of the sponsor of the existence of a very strong deterrent factor as further offending will result in the loss of his wife, his family, and any prospects of re-entering the UK. I accept there has been a material change in the appellant's circumstances since the time when he did reoffend and was deported.
90. I take into account the fact that the appellant's wife has been affected by his deportation, that they now have young children, and the evidence indicates the appellant wants to be able to parent with his partner.
91. Having given the matter very close consideration, giving due weight to Mr Thompson's submissions, I find the appellant has established that he no longer presents a real risk that he will reoffend or that he poses a genuine threat. This is a decision that has been given careful thought and follows an assessment of the evidence in the round as a result of the weight that must be given to the need for a strong deportation regime in relation to those who commit criminal offences, but this is not a deportation under domestic legislation but under the 2016 Regulations.
92. I therefore find, on balance, that the appellant has established that it is appropriate in law for the deportation order made against him in 2014 to be revoked.
93. In terms of proportionality of the decision, as the deportation order is no longer justified it cannot be proportionate under EU law to prevent the applicant returning to his family in the UK.
94. In terms of Article 8 ECHR, the family life the appellant has with his family in the UK, I find in light of the core finding in relation to the deportation order that the refusal is a disproportionate interference with the ability of the appellant and his family to enjoy their family life in the UK, even in light of public interest.

### **Notice of Decision**

98. The appeal is allowed in accordance with the 2016 Regulations.
99. The appeal is allowed on Article 8 ECHR human rights grounds.

### **ORDER**

100. The Senior Partner of UK Migration Lawyers shall attend before Upper Tribunal Judge Hanson sitting at Bradford on the 5 July 2024 to show cause why those responsible, individually and/or as a firm, should not be referred to the Solicitors Regulation Authority for breach of their professional obligation to honour directions, duty to the Tribunal, and failure to protect their client's interests.

**C J Hanson**

Judge of the Upper Tribunal



Appeal Number: UI- 2022-006609

Immigration and Asylum Chamber

**3 June 2024**