IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000579
UI-2024-000580
First-tier Tribunal No:
HU/59522/2023
EU/53093/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 24 September 2024

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

Dawid Powroznik
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr D Chirico, counsel instructed by Bindmans LLP
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on 20 September 2024

DECISION AND REASONS

Introduction

1. The Secretary of State has been granted permission to appeal the decision of First-tier Tribunal Judge Latta allowing the appellant's appeal following a hearing which took place on 10 January 2024. However, for ease of reference hereafter the parties will be referred to as they were before the First-tier Tribunal.

2. Permission to appeal was granted by First-tier Tribunal Judge Saffer on 20 February 2024

Anonymity

3. No anonymity direction was made previously, and there is no reason for one now.

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Factual Background

4. The appellant is a national of Poland now aged twenty-nine who entered the United Kingdom during 2008 with his mother and sibling. The appellant's offending history, ultimately, led to a decision to make a deportation order dated 21 April 2023 on the basis that he was a persistent offender who had not acquired a permanent right of residence in the United Kingdom under The Immigration (European Economic Area) Regulations 2016, as saved. The details of the appellant's immigration and offending history are set out in that decision. In addition, the appellant's application under the EUSS was refused on the same date and he appealed both decisions simultaneously.

The decision of the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, the main issues were whether the appellant had only a derivative right of residence in the United Kingdom, whether he had acquired a permanent right of residence and whether he posed a genuine, present and sufficiently serious threat. The judge concluded that the appellant had arrived in the United Kingdom in 2007 and had thereafter resided here as the direct descendant aged under 21 of an EU national exercising treaty rights. The judge found that the appellant had obtained permanent residence and, in addition, he had resided in the United Kingdom for a continuous period of ten years from September 2007. The conclusion was that the respondent had not established that there were imperative grounds requiring the appellant's deportation. Both appeals were allowed.

The appeal to the Upper Tribunal

6. There is one ground of appeal, that is that the First-tier Tribunal made 'a mistake as to a material fact which could be established by objective and uncontentious evidence before the Immigration Judge (ie COIS assessments) where unfairness resulted from the fact that a mistake was made.'

7. The substance of the arguments made is that the judge failed to consider whether the appellant's persistent offending broke the continuity of the permanent right of residence which he had acquired. It was also 'submitted' that the judge had not 'fully appreciated' the multifaceted nature of the public interest in deportation which was not restricted to risk of reoffending.

8. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

> It is arguable that the Judge may have materially erred in considering what impact if any the persistent offending had on his integration and consequent continuous residence. All grounds are arguable.

9. A skeleton argument was filed on behalf of the appellant on 17 September 2024 in which the appeal was opposed. In particular, it was contended that there was no challenge in the grounds to the finding that the appellant had acquired a permanent right of residence and that the Secretary of State had never advanced the case that the appellant's deportation was justified on serious grounds of public policy or public security were it to be found that he had acquired a permanent right of residence. Furthermore, the appellant sought his reasonable

costs of the Upper Tribunal appeal because the Secretary of State had failed to notify the Tribunal that the arguments relied upon in the grounds were never raised before the First-tier Tribunal.

The error of law hearing

10. The matter comes before the Upper Tribunal to determine whether the decision contains an error of law and, if it is so concluded, to either re-make the decision or remit the appeal to the First-tier Tribunal to do so. The hearing was attended by representatives for both parties as above. Both representatives made concise submissions and the conclusions below reflect those arguments and submissions where necessary. A series of bundles were submitted by the Secretary of State containing, inter alia, the core documents in the appeal, including the appellant's and respondent's bundles before the First-tier Tribunal. At the end of the hearing, I informed the parties that the decision of the First-tier Tribunal contained no material error of law and give my reasons below. In addition, Mr Chirico made reference to the appellant's intention to seek his costs of these proceedings.

Decision

11. The grounds advanced on behalf of the Secretary of State amount to no more than disagreement with the decision of the First-tier Tribunal and, accordingly no arguable, let alone material, error of law can be detected. Indeed, permission ought never to have been granted.

12. The difficulty for the respondent is that her case was based solely on the argument that the appellant had not acquired a right of permanent residence and that as such he was entitled to only the lowest level of protection from deportation. No alternative case was advanced and Mr Tufan did not argue otherwise. Indeed, the summary of the issues set out by Judge Latta, which are reproduced here, makes this abundantly clear.

> 14. However, it was not accepted by the HOPO that the Appellant had acquired a right of permanent residence in the UK under EU law prior to the end of 2020. It was also maintained that the Appellant posed a genuine, present and sufficiently serious threat to a fundamental interest of the UK.
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> 15. In the refusal decision, at paragraphs 47 to 49 (RB1, 34-35), it was determined that the Appellant could not acquire a permanent right of residence in the UK as he only ever had a derivative right of residence. This point was disputed by the Appellant's representative, and I noted from the Appellant's ASA (paragraph 11) that in their view this was a fundamental error which had already been raised at three previous CMRH hearings.
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> 16. As a result, I sought clarification from the HOPO at the outset whether it was the Respondent's position that the Appellant only had a derivative right of residence in the UK. It was maintained that he did in light of the refusal letter.

13. The appellant's skeleton argument which was before the First-tier Tribunal provides further confirmation that the appellant's case was advanced on the basis that he had not just acquired permanent residence but was entitled to the highest level of protection, having resided for in excess of ten years in the United Kingdom. The said skeleton argument also set out the contention that the appellant did not pose a threat even at the lowest threshold.

14. Mr Tufan placed particular reliance on para 6 of the grounds in relation to the public interest in deportation, adding, which he considered to be his strongest point, that there was no reference to Schedule 1 of the 2016 Regulations in the decision and specifically no reference to the importance of combating the effects of persistent offending.

15. Mr Tufan did not go as far as to say that if there was a failure to consider Schedule 1 that it would have made any difference to the outcome in this appeal. He conceded that it may or may not be material and that this is a case where the decision could have gone either way. As for the remainder of the grounds, Mr Tufan made no challenge to the judge's findings that the appellant was a family member of an EEA national or that he had acquired permanent residence. In addition, Mr Tufan declined to expand upon the point made in the grounds that the appellant's offending broke the continuity of his residence.

16. I consider that it can be taken as read that the experienced specialist judge had regard to Schedule 1 as a whole including the relevant factors for this appeal. This appeal plainly concerned the appellant's persistent offending, however the judge did not err in concluding, on the basis of the professional risk assessments made, that there was a low risk of any such offending in the future. Had the judge reproduced Schedule 1 in the decision, it would have made no difference in this case as all the relevant facts were considered in this careful and detailed decision.

17. Lastly, the judge made no error in finding that the Secretary of State had failed to establish that the decision to deport the appellant complied with 2016 Regulations. Nor did the judge err in the manner in which he concluded that the appellant was entitled to succeed in his appeal against the refusal of his application under the EUSS.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal shall stand.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 September 2024

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email