



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001155

First-tier Tribunal No: HU/59257/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 20th of June 2024

Before

UPPER TRIBUNAL JUDGE SHERIDAN
DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

Secretary of State for the Home Department

Appellant

and

Michal Szajca
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Banham, Senior Home Office Presenting Officer
For the Respondent: Mr Islam, Counsel instructed by Burton & Burton Solicitors

Heard at Field House on 20 May 2024

DECISION AND REASONS

1. This is an appeal by the Secretary of State. However, for convenience we will refer to the parties as they were designated in the First-tier Tribunal

Background

2. The appellant is a citizen of Poland who has been living in the UK since 2012. In October 2019 he committed an offence of unlawfully inflicting grievous harm and in October 2021 was sentenced to 2 years' imprisonment.
3. In the light of the appellant's offending, the respondent made a decision to deport him from the UK in accordance with regulations 23(b) and 27 of the

Immigration (European Economic Area) Regulations 2016, as saved (“the 2016 Regulations”). The appellant appealed against this decision, pursuant to regulation 36 of the 2016 Regulations. His appeal came before Judge of the First-tier Tribunal O’Keeffe (“the judge”). In a decision dated 29 February 2024 the judge allowed the appeal. The respondent is now appealing against this decision.

Decision of the First-tier Tribunal

4. It was common ground in the First-tier Tribunal that the 2016 Regulations applied. It was also common ground that the appellant had been resident in the UK in accordance with the 2016 Regulations for a continuous period of 5 years and therefore that it fell to the respondent to establish that his removal was justified on “serious grounds of public policy and public security”.
5. After summarising the appellant’s offence, and observing both that it was serious and that it had had a significant impact on the victim and the victim’s family, the judge considered (in paragraphs 15 - 29 the decision) a range of factors relevant to whether the “serious grounds” threshold was met. This included:
 - a. The pre-sentence report provided to the sentencing judge assessed the appellant as posing a low risk of reconviction and of serious recidivism during the next 2 years, but as posing a medium risk of serious harm to members of the public.
 - b. The sentencing judge expressed the view that the appellant does not pose a significant ongoing risk to the public and is likely to be rehabilitated.
 - c. The OASYS assessment concluded that the risk of reoffending was low and the risk of serious recidivism was assessed as 0.31%. The judge also recorded that it is said that the appellant was motivated to address his offending behaviour.
 - d. There was an absence of evidence of the appellant attending courses to mitigate the risk of reoffending but this was because he had been assessed as not requiring such courses and none had been offered to him.
 - e. The appellant was previously of good character.
 - f. The appellant generally recognised the need to control his drinking and is motivated to change. This finding was made after consideration of the appellant’s problems with alcohol.
 - g. The appellant’s prison record describes 3 instances of negative behaviours, but none serious enough to result in a formal sanction or adjudication; and the OASYS assessment records that there were no negative entries for the appellant whilst in custody.
 - h. The appellant is currently employed and is in a genuine and subsisting relationship.
6. After undertaking this assessment of the evidence, the judge set out her conclusion in paragraph 30, where she stated:

“It is for the respondent to justify the decision and whether the risk posed meets the high threshold of “serious grounds”. On the evidence before me, I find that the respondent has not discharged the burden. Accepting that the offence the appellant

committed was serious, it is not so serious and the risk of causing serious harm to the public through reoffending in a similar way is not so great, that it amounts to serious grounds. The matters relied on by the respondent are not, in my judgment, sufficient to constitute serious grounds of public policy and public security.”

Grounds of Appeal

7. The respondent has advanced a single ground: failure to give adequate reasons for findings on a matter.
8. The inadequacy of reasoning in the decision is said to arise because the effect of the offending on the victim, nature of the offence, and the degree of risk to the public demonstrates that the appellant’s deportation was justified.
9. Also included within the “reasons challenge” are assertions about failing to have regard to evidence. It is said that the judge failed to have adequate regard to the appellant’s abuse of alcohol and unresolved anger issues as demonstrated by his behaviour in prison; and that there is an absence of identifiable protective factors.

Submissions

10. Mr Banham submitted that the evidence relating to the offence and the appellant’s subsequent conduct demonstrates that he poses a serious risk and the reasons given in the decision do not adequately explain why the judge reached a different view. We put to Mr Banham that the grounds appear to be advancing a rationality - rather than a reasons - challenge. He did not accept this; and maintained that the challenge was to the reasons given by the judge.
11. Mr Islam’s succinct response was that the grounds are no more than a disagreement with a thorough decision where all of the relevant evidence has been considered.

Analysis

12. It is readily apparent, from a review of paragraphs 15-29 of the decision (summarised in paragraph 5 above), that the judge’s conclusion on whether the “serious grounds” threshold was met is supported by detailed reasoning. In short, the judge found that although the appellant’s offence - and its implications - were serious, the threshold was not met because (i) the sentencing judge found that the appellant was likely to be rehabilitated; (ii) the OASYS report found that the risk of recidivism was low; (iii) the appellant was previously of good character; (iv) the appellant was motivated to control his alcohol consumption; and (v) there were protective factors (his family and employment”). These are cogent reasons which leave the reader of the decision in no doubt as to why the judge reached the conclusion that she did. There is therefore no merit to the respondent’s “reasons challenge”.
13. There is also no merit to the contention that the judge failed to have adequate regard to risk arising from alcohol, as this is addressed in detail in the decision and the judge was entitled to conclude, based on the evidence, that the appellant recognised the issue and was motivated to control his alcohol consumption. Equally, the contention that the appellant’s behaviour in prison was not adequately considered is meritless because it also was considered in detail and a rational conclusion on this issue was reached. The assertion in the

grounds that there are no identifiable protective factors fails to engage with the judge's finding that there were: his employment and relationship.

14. This is a comprehensive and thorough decision, where the conclusion reached on whether the "serious grounds" threshold was met is supported by detailed and cogent reasons. We agree with Mr Islam's characterisation of the grounds: that they amount to no more than a disagreement with the conclusion reached by the judge. As we observed at the hearing, to succeed in an appeal on the basis that the respondent believes that the conclusion reached is wrong, a rationality challenge would need to be made. Mr Banham was clear, however, that no such challenge was being advanced.

Notice of Decision

15. The decision of the First-tier Tribunal did not involve the making of an error of law and stands.

D. Sheridan

Upper Tribunal Judge Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

11.6.2024