



**Upper Tribunal
(Immigration and Asylum Chamber)
DA/00581/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Bradford

On 13th November 2017

**Decision & Reasons
Promulgated**

On 21st November 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ADRIAN MIECZYSLAW MISKOWIEC
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr M Diwncyz, Home Office Presenting Officer
For the Respondent: In person

DECISION AND REASONS

- 1.** This is the Secretary of State's appeal against the decision of Judge O'Hanlon made following a hearing at Bradford on 21st March 2017.

Background

- 2.** The claimant is a citizen of Poland born on 3rd May 1997. He came to the UK aged 9 in 2006.

3. He has eight convictions for nine offences committed between October 2013 and September 2016. The convictions include burglary and theft and for assault occasioning actual bodily harm. The last conviction was for failure to comply with a community order.
4. The judge found that the claimant had acquired a permanent right of residence under Regulation 19(3). His removal could therefore only be justified on grounds of public policy, public security or public health in accordance with Regulation 21. There is no challenge to that conclusion on the grounds.
5. The evidence before the judge was that the claimant lives with his mother and his brother, who is being treated in a psychiatric hospital. He has a girlfriend who lives within walking distance and she has two children, whom he sees very regularly. Indeed he takes her daughter to school three days a week and looks after her when she comes back from nursery.
6. The judge acknowledged the serious nature of some of the offending.
7. He wrote:

“In addition, the fact that the appellant has been imprisoned for failing to comply with the requirement of a community order suggests that there has been a lack of regard for the law and a lack of remorse for his offending behaviour which indicates a propensity to reoffend and that the appellant represents a genuine and sufficiently serious threat to the public to justify his deportation on grounds of public policy.”

8. The judge concluded:

“However, Regulation 21(5)(a) of the 2006 Regulations requires any decision to comply with the principle of proportionality and specifically provides that a person’s previous criminal convictions do not of themselves justify the decision. It is also necessary to take into account the matters set out in Regulation 21(6) as previously indicated. In the case of the appellant he is 19 years of age and I find the evidence of the appellant and his mother as to the lack of family ties which he might have in Poland to be credible. The appellant’s mother did not seek to exaggerate the lack of contact between herself and her family in Poland. The appellant’s mother accepted that her mother still resides in Poland although on the basis of her evidence there is little contact. The appellant’s own evidence as to his knowledge and experience of Poland is effectively that this is extremely limited. Although the appellant can speak Polish any knowledge and experience which he had of Poland was gained before he came to the United Kingdom and he therefore has little or no adult knowledge of Poland, his country of origin. I therefore find, having taken into account the matters referred to in Regulation 21(6) of the 2006 Regulations that it would not be proportionate to remove the appellant from the United Kingdom and return him to Poland, his country of origin. I find on the basis of the evidence before me that

the appellant would have considerable difficulties in readjusting to life in Poland and it would not therefore be proportionate to expect the appellant to return there. In the circumstances I allow the appellant's appeal."

The Grounds of Application

- 9.** The Secretary of State sought permission to appeal on the grounds that the judge had made an error of law in concluding that the claimant's personal conduct does not represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. The judge should have considered the guidance in Bualale [2008] EWCA Civ 806 in assessing the seriousness of the offence. It was clear that a balance must be struck between the seriousness of offending that involved violence and the risk of it being repeated. Even a slight risk of him reoffending could constitute a genuine, present and sufficiently serious threat. Given that all the offences have been committed within a relatively short period of time there was an indication for a propensity to reoffend which confirmed that the claimant represents a genuine and sufficiently serious threat to the fundamental rights of UK citizens. Failure by the judge to give adequate reasons to rebut this is an error of law.
- 10.** Second, the judge had failed to give reasons for finding that the claimant was well-integrated. His convictions demonstrate that he has failed to respect the values of society and as such has not demonstrated that he has integrated.
- 11.** Third, the judge failed to engage with the margin of appreciation that is to be afforded to member states in the context of establishing their own public policy thresholds.
- 12.** Finally, the judge had failed to give reasons as to why a fit, healthy young man who could speak the language and has relatives in Poland could not readjust to life there.
- 13.** Permission to appeal was initially refused by Judge Nightingale but granted by Upper Tribunal Judge Bruce on 8th September 2017.

The Hearing

- 14.** Mr Diwncyz accepted that there were real difficulties with his grounds. The first three address the issue of whether the claimant represents a genuine, present and sufficiently serious threat to the community. However the judge accepted that he did represent such a threat. The appeal was not allowed on that basis.
- 15.** No application was made to amend the grounds.
- 16.** Mr Diwncyz said that the decision was very lenient. That is correct. The claimant was extremely fortunate to find a judge who, having found that the claimant's conduct did represent a threat to the public, nevertheless

allowed the appeal on the ground that it would not be proportionate for him to be deported.

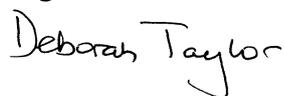
- 17.** The judge heard oral evidence from the claimant, his girlfriend and his mother. He accepted that the evidence was credible and there is no challenge in the grounds to his assessment. On that evidence, the family in the UK are estranged from the Polish family because the claimant's mother had her sons out of wedlock. His girlfriend's evidence that he was closely involved in the childcare for her daughter was also accepted.
- 18.** As Mr Diwncyz acknowledged, the decision was within the spectrum of ones which could be made by a judge. He acknowledged that merely seeking to reargue that it would not be disproportionate to deport the claimant is some way from establishing that the judge erred in law.
- 19.** The claimant has been extremely fortunate. His appeal was allowed in circumstances where many Immigration Judges would have dismissed it. The Secretary of State then challenged the decision on grounds which were largely irrelevant to the decision, did not seek to amend them and then made submissions which were a clear attempt to reargue the case. No attempt has been made to identify an error of law.
- 20.** Clearly if the claimant offends again he will have great difficulty in resisting a further deportation order.

Notice of Decision

- 21.** The original judge did not err in law. The decision stands. The Secretary of State's appeal is dismissed.

No anonymity direction is made.

Signed



Date 20 November 2017

Deputy Upper Tribunal Judge Taylor