



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: EA/07897/2017

THE IMMIGRATION ACTS

Heard at Newport

On 14 December 2018

**Decision & Reasons
Promulgated**

On 16 January 2019

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE IMMIGRATION OFFICER, STANSTED

and

MARCIN KWIATKOWSKI

Appellant

Respondent

Representation:

For the Appellant: Ms Hilary Aboni, Senior Home Office Presenting Officer

For the Respondent: The sponsor, Ms Fay Dellimore

DECISION AND REASONS

Introduction

1. The respondent (whom I will refer to as the “claimant”) is a citizen of Poland who was born on 13 August 1976.
2. On 5 September 2017, the claimant arrived in the United Kingdom at Stansted Airport on a flight from Poland. Following an interview by an Immigration Officer, he was refused admission to the United Kingdom on the grounds of public policy under reg 11 (read with regs 23 and 27) of the

Immigration (EEA) Regulations 2016 (SI 2016/1052). The basis of that refusal was his previous convictions in the UK between 2008 and 2014 when he had been convicted of 42 offences on 24 occasions.

3. The claimant appealed to the First-tier Tribunal. Following a hearing, Judge Mathews allowed the claimant's appeal. He found that the claimant no longer had a propensity to reoffend, in effect because his previous offending was related to his drug addiction and that he was now "drug free" and had been so for "a considerable period". As a consequence, the Immigration Officer had failed to establish, as required under reg 27, that the claimant represented "a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society".
4. The Immigration Officer sought permission to appeal. Permission was initially refused by the First-tier Tribunal but on 4 September 2018 the Upper Tribunal (UTJ Kebede) granted the Immigration Officer permission to appeal. The basis of that grant of permission is set out in para 2 of UTJ Kebede's decision as follows:

"There is arguable merit in the assertion in the grounds that the judge's reasoning in regard to the risk of re-offending was inadequate, in particular in so far as it failed to take account of the limited period following the appellant's last term of imprisonment in the UK and his departure from the UK in the context of his lengthy history of offending. The grounds are arguable".
5. The appeal was listed before me on 14 December 2018 for a Case Management Review Hearing. However, at that hearing the sponsor, Ms Dellimore who is the claimant's wife, requested that the hearing be converted to a substantive hearing. Ms Aboni, who represented the Immigration Officer, indicated that she was in a position to deal with the 'error of law' issue and agreed that the hearing should proceed on that basis. As a consequence, I heard submissions from Ms Aboni (in support of the Immigration Officer's grounds) and from the sponsor on behalf of the claimant.

Background

6. As I have already indicated, the claimant is a citizen of Poland. He lived in the United Kingdom between 2008 and 29 August 2015 when he returned to Poland. Between July 2008 and September 2014, the claimant was convicted on 24 occasions of 42 offences, mainly of theft. The most recent offence, however, was common assault for which he received an eight week period of imprisonment in September 2014. He has committed no offences since September 2014.
7. The claimant met Ms Dellimore in 2013. She works in the Prison Service with prisoner offenders to support their rehabilitation and this was how she met the claimant. They married in Poland on 2 September 2017.

8. Having been released from prison in the UK following his conviction in September 2014, the claimant returned to Poland on 29 August 2015 where he was arrested for unpaid child maintenance and imprisoned for two years. Following his release, he sought to return to the UK to be with his wife, the sponsor. It is against the refusal of his admission to the UK on 5 September 2017 against which the claimant now appeals.

The Judge's Decision

9. Before Judge Mathews, the sponsor gave oral evidence and reliance was placed on a number of documents, in particular from a psychologist (Miloszc Winnicki) and a social worker in Poland. The thrust of the claimant's case before Judge Mathews was that his offending had been driven by his drug addiction and that he was now drug free and therefore, despite his previous offending, no longer had a propensity to offend and therefore presented no risk to the public in the UK.
10. The sponsor gave oral evidence, which the judge accepted, that the claimant had been drug free for over three and a half years.
11. The psychologist knew the claimant through his residence at a house "for men who have reformed their behaviour and are able to commit to a strict no drugs or alcohol policy". He noted that the claimant had lived in this house since 2 October 2017 and had "remained drug free throughout his period living at the house". This was despite a "difficult period" when the claimant had been separated from the sponsor.
12. In addition, the social worker in her report of 25 January 2018 noted that the claimant had regular contact with a social worker (following his release from prison in Poland) and that he was compliant with the terms of the "Individual Unemployment Tackling Programme" in which he was enrolled. This included positive steps in relation to his living arrangements, including positive behaviour dealing with conflict in his protected housing facility and had made positive efforts to find employment.
13. Judge Mathews, in addition to accepting the sponsor's evidence, accepted that of the psychologist and social worker. His reasons and findings are at paras 15-31 as follows:
 - "15. I have given careful consideration to all the documents before me.
 16. Miss Dellimore gave evidence and adopted her witness statement as her account. I note and find from the oral evidence, that she is employed in assisting in the rehabilitation of offenders, that is how she met the appellant. I find that they met in 2013 and married in September 2017. The genuine nature of the marriage has never been doubted and was confirmed in the evidence I heard, and statements that I read.
 17. From the oral evidence I find that Miss Dellimore has flown to Poland as often as she can while her husband has been there, visiting at least once a month for over 2 years.

18. I have considered the previous convictions for the appellant, they show 24 court appearances from July 2008, until September 2014. I accept that they are all offences flowing from drug addiction, and attempts to steal to fund such addiction. The sole matter of violence, common assault in September 2014, I find consisted of attempting to escape a security guard who had detained him.
19. I note that there has been no offending since September 2014.
20. I have read with care the statement from the appellant, the assessment of his social worker in Poland, and the statement of his psychologist, Miloszc Winnicki, in Poland.
21. I am impressed by the references for this man in Poland, I note and find from the statements and evidence that after his release from prison, the appellant secured accommodation for himself at a hostel in Sopot. The hostel has a strict ban on drugs or alcohol. The appellant, I note, has engaged well with his social worker, has complied with the rules in his hostel, and is viewed as a reliable and trustworthy member of the house. I note that he undertakes work to a high standard and is self-sufficient. He is described as an active, willing, co-operative and motivated man.
22. Mr Winnicki speaks of the appellant's commitment and determination to rebuild his life and be with his wife. He confirms that the appellant is not only a rule abiding member of the house in which he lives, but has also shown himself to be able to resolve conflicts between other house members when they have arisen.
23. The appellant's drug free status is confirmed, and I find that he has been drug free now for over three and a half years, as confirmed by his wife. I note that that
24. I note that he has remained drug-free whilst in the community in Poland, as well as when in prison there, and during an inevitably difficult period of separation from his wife. I find that to be an impressive endorsement of his motivation and success in addressing his drug misuse.
25. I also accept and find that he now pays child maintenance as required, and I find that arrears accrued whilst he was in the UK, and suffering from his addiction.
26. I note that Miss Dellimore, as a professional who supports former offenders in rehabilitation, is well placed to support and help the appellant in the future in maintaining drug free status.
27. I accept from the oral evidence that random drug testing in Poland has confirmed his drug-free status, this is corroborated by the reports from his accommodation and social worker in Poland.
28. Bringing together the findings above I am satisfied that this man has successfully addressed his previous drug misuse. I find that he is drug free and has been for a considerable period. That progress has been made despite the difficulties of imprisonment and separation from his wife. I find this man to be motivated to build upon the progress that he has already made.
29. I do not find that he now has a propensity to reoffend given his successful steps to break drug addiction, the length of time for

which he has been drug-free, and the fact that his previous offending was all the result directly or indirectly of drug misuse.

30. The public interest arguments raised as a bar to this man's admission were all prefaced on his perceived risk of reoffending. Both parties accepted at the outset of this appeal that the asserted risk of reoffending was the issue upon which this appeal turned.
31. In the circumstances above I am satisfied that this man has addressed his drug problem, and no longer has a propensity to offend, accordingly he presents no risk to the public or community in the UK, and the public interest does not lie in his exclusion".

The Submissions

14. On behalf of the Immigration Officer, Ms Aboni relied upon the grounds of appeal. She submitted that the judge had failed to give adequate reasons for his finding that the claimant did not represent a "genuine, present and sufficiently serious threat" to a fundamental interest of society. She submitted that the claimant had only been in the UK ten months after his conviction before he went back to Poland. That was not a sufficient time to found the judge's conclusion that the claimant was "drugs free". Further, there was no OASys Report or probation report from the UK nor from Poland. Relying upon the grounds, Ms Aboni submitted that the authors of the references from Poland had not been available to be cross-examined and that was a matter that went to their weight. She submitted that it was not properly open to the judge to find on the basis of the sponsor's evidence and these reports that the claimant was drugs free given the history of his offending.
15. The sponsor relied upon a number of matters. She said that the claimant's offending was due to his drug addiction and he had not been using drugs or committing any crimes since they had been together. In the nine months before he went back to Poland, after he was released from prison in the UK, he was not using drugs and had found employment which was still open to him. She told me that the claimant's offence in Poland was of non-payment of child maintenance. That related to non-payment prior to his return to Poland. On his return, having been in prison, Ms Dellimore drew my attention to the two reports, in particular that of the psychologist who had knowledge of the claimant in the context of the housing programme he was on. She invited me to conclude that both the psychologist and social worker's reports were ones which the judge was entitled to rely upon in reaching his finding that the claimant was drugs free and no longer a risk of committing offences in the UK.

Discussion

16. It was common ground before Judge Mathews that the central issue in the appeal was whether the claimant had a propensity to reoffend, and therefore presented a "genuine, present and sufficiently serious threat" to

a fundamental interest of society under reg 27(5)(c) of the 2016 Regulations.

17. The judge's finding that the claimant did not fall within that requirement so as to establish that his admission was contrary to public policy turned upon a number of factual findings that he made. First, the claimant's offending was driven by his drug addiction. In effect, his offending was acquisitive, that is he stole in order to pay for his drug habit. Second, the claimant had been drug free for a "considerable period". That is a finding consistent with the sponsor's evidence that the claimant has been drugs free since they have been together and the evidence from the psychologist and social worker in Poland. Thirdly, the claimant has "successfully addressed his previous drug misuse" despite the difficult circumstances relating to his separation from his wife (apart from visits) since he returned to Poland in August 2015.
18. Whilst, as Ms Aboni drew to my attention, there is no probation or OASys Report concerning the claimant's rehabilitation and, in particular, his drug misuse that, no doubt, flows from the fact that his last period of imprisonment was only for eight weeks, only four of which he would have served in custody.
19. The judge did, however, have the evidence from the psychologist and independent social worker in Poland. Although the grounds seek to raise the credentials of the authors, the judge was entitled to accept their evidence on the basis of who they stated they were. Of course, neither gave oral evidence which could, therefore, be tested in cross-examination. But, on its face, the psychologist report clearly supports the evidence of the sponsor and in relation to the claimant's general behaviour post-release in Poland, that of the social worker. It is not clear to what extent the reliability of the reports was challenged before the judge. There certainly does not appear to have been any challenge to their genuineness and, given that would have been a matter which the Immigration Officer would have had to establish, there was no evidence that could have supported a conclusion that they were not genuine. Given the mutual support the reports give to each other, together with that of the sponsor whom the judge heard give evidence and whose evidence he unequivocally accepted, the judge was undoubtedly entitled to treat them as reliable. The claimant's drug free status was, therefore, attested to over a longer period than his release from prison in the UK in late 2014 and his departure for Poland in August 2015. Contrary to what is contended in the grounds, the judge based his finding upon a longer period (he described it as a "considerable period") that the claimant was, and continued to be, drug free. The judge was entitled to accept the sponsor's evidence that his offending was related to his drug abuse. He was also entitled to accept that she believed he had been drug free since they had been together. And, as Judge Mathews found, the claimant's most recent offence did not appear to fall within the acquisitive category of his earlier offending. It related to a common assault whilst he was attempting to escape from a security guard who had detained him.

20. On the central, and determinative issue in the claimant's appeal, there was an evidential basis for the judge's factual findings which led him to conclude that the respondent (and the burden was upon the respondent) had not established that the claimant had a propensity to offend and so presented a risk to the public in the UK. That ultimate finding was not irrational based upon the judge's careful assessment of all the evidence, which he was entitled to accept, concerning the claimant's rehabilitation despite his previous offending history.
21. For these reasons, I am satisfied that the judge gave cogent and adequate reasons for his findings leading him to conclude that the claimant did not fall within reg 27(5)(c) and that, therefore, it had not been established that his admission to the United Kingdom was justified on public policy grounds.

Decision

22. The First-tier Tribunal's decision to allow the claimant's appeal under the Immigration (EEA) Regulations 2016 did not involve the making of an error of law and that decision stands.
23. Accordingly, the Immigration Officer's appeal to the Upper Tribunal is dismissed.

Signed



A Grubb
Judge of the Upper Tribunal

8 January 2019