



IAC-AH-AL-V1

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

Appeal Numbers: DA/00802/2014

THE IMMIGRATION ACTS

Heard at Birmingham

**Determination
Promulgated**

On 17 November 2014

On 17 November 2014

Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

Patryk Skupinski

Respondent

Representation:

For the Appellant: Mr Smart, Senior Home Office Presenting Officer

For the Respondents: Mr Bazini, instructed by One Immigration

DECISION AND REASONS

The Appeal

1. This is an appeal by the Secretary of State against a determination promulgated on 16 July 2014 of First-tier Tribunal Judge Pickup and Mr G H Getlevog which allowed the respondent's appeal against deportation.
2. For the purposes of this determination, I refer to Mr Skupinski as the appellant and to the Secretary of State as the respondent, reflecting their positions as they were before the First-tier Tribunal.

3. The appellant is a citizen of Poland, born on 5 March 1986.
4. The background to this matter is that the appellant was convicted on 2 September 2013 of inflicting grievous bodily harm for which he received a sentence of 18 months imprisonment. Following that conviction, on 25 April 2014 the respondent made a decision to make a deportation order against the appellant. As above, the appellant's appeal against that decision was allowed by the First-tier Tribunal.
5. Before me Mr Smart conceded that he could not rely on paragraphs 6, 7 and 8 of the grounds of appeal. There was nothing to substantiate the reference to MAPPAs, the case law in paragraph 7 related to automatic deportation of non-EEA nationals and the assertion in paragraph 8 about the *mens rea* of the offence was not correct.
6. The challenge maintained before me, therefore, was that the clear credibility finding made against the appellant and his partner at [18] had not been taken into account by the First-tier Tribunal in their proportionality assessment. In particular, submitted Mr Smart, the appellant's lack of credibility should have been taken into account when considering the risk of reoffending. The OASYS report was predicated on the appellant being in a relationship with another woman at that time and prepared without the knowledge of his lack of credibility.
7. The First-tier Tribunal was clearly entitled to make adverse credibility findings against the appellant and his partner at [18] where they gave significantly different information about the history of their relationship.
8. It remains the case that it is common ground that there had to be "serious grounds of public policy or public security" as in Regulation 21 (3) of the Immigration (European Economic Area) Regulations 2006 (the EEA Regulations) as the appellant had been a qualifying person for at least 5 years and had obtained permanent residence status as a result.
9. Where that was so, it appeared to me that the panel was entitled to find at [23] that it was precluded from relying on the one index offence to show a "genuine, present and sufficiently serious threat affecting one of the fundamental interests of society", that additionally being so where the risk of reoffending was low risk of harm to others and of reoffending albeit a medium risk to the particular victim. It was not my judgement that the assessment at [23] onwards could be undermined by the OASYS report having been prepared without full knowledge of the appellant's relationship history and circumstance to the extent that the outcome of the appeal could have been different.
10. In addition, the panel specifically took into account the appellant's lack of credibility at [23], stating that:

"Whilst we have serious reservations about the credibility of the appellant's factual account, the fact remains that no conduct other than the single criminal convictions is relied on."

11. It was therefore my conclusion that the grounds did not have merit as they did not show a material error on a point of law in the determination of the First-tier Tribunal.

Decision

12. The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed:

Date: 17 November 2014

Upper Tribunal Judge Pitt