



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

Appeal Number: DA/00578/2014

**THE IMMIGRATION ACTS**

**Heard at Nottingham  
On 19<sup>th</sup> May 2015**

**Decision and Reasons Promulgated  
On 22<sup>nd</sup> May 2015**

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**MARIUSZ BREGULA**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: In person (no legal representation)  
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a Polish national. A notice of decision to make a deportation order under regulation 19(3)b of the Immigration (European economic Area) Regulations 2006 was made and served upon him on 26<sup>th</sup> March 2014. The First-tier Tribunal in a determination promulgated on 10th June 2014 dismissed his appeal under the EEA Regulations.
2. Permission to appeal was sought, and granted, on the grounds

- a. That the First-tier Tribunal had misunderstood or ignored the evidence provided by the appellant that he had been undertaking alcohol treatment/rehabilitation and that this had led to a failure by the First-tier Tribunal to properly consider whether the principles in Essa [2012] EWCA Civ 1718 applied.
  - b. That the First-tier Tribunal had erred in finding that the appellant's wife and child could move to Poland with him, thus interfering with their rights to free movement, and
  - c. That the First-tier Tribunal had failed to have regard to the best interests of the appellant's son who has been in the UK since the age of two and had, at the date of the hearing before the First-tier Tribunal, been in the UK for some 8 years and had commenced his education in the UK.
3. Although UT Judge Rintoul in granting permission considered the grounds as regards alcohol/Essa and the best interests of the child to be weak, he granted permission on all grounds.
4. Mr Bregula provided me with further documents in a small bundle and a written submission in addition to his oral submissions.
5. Mr Bregula was very clear that his criminal problems have arisen as a result of his alcoholism. He has permanent residence in the UK, as do his wife and child, and he has worked save for the periods he has been in prison. He was adamant that he was addressing his alcoholism and the additional documents he produced confirmed this, although I cannot take these into account in determining whether there is an error of law in the determination of the First-tier Tribunal such that it is set aside to be remade. Mr Bregula stressed the very difficult issues that arise from alcoholism and how hard he is trying to combat this addiction.
6. It does appear that the First-tier Tribunal may have misinterpreted the information put to them as to the courses and treatment Mr Bregula has been receiving although more in terms of the months undertaken than the nature of what he was doing. The evidence given to me at the hearing before me was not before the First-tier Tribunal judge and he cannot therefore be criticised for failing to take it into account. It does appear that there has been interruption in the appellant's treatment due to moving between prisons. The issue however is not whether the appellant has been undertaking relevant or appropriate treatment but whether that treatment (whether it is through specific rehabilitation courses or through attendance at AA meetings) is at such a level that his deportation would seriously interfere with his overall rehabilitation. There was no suggestion to the First-tier Tribunal that Mr Bregula would not be able to access relevant treatment or rehabilitation facilities in Poland or indeed that such treatment or facilities did not exist. There was no suggestion to the First-tier Tribunal that the extent of engagement with such treatment/rehabilitation as there is at present in the UK was such that a break in such treatment would have serious consequences in Mr Bregula's overall rehabilitation.
7. There is clearly a European dimension that has to be taken specifically into account; this widens consideration beyond the interests of the expelling state

and the foreign criminal. Consideration is to be given to the risks of compromising the social rehabilitation of an EU citizen in the country in which he has become genuinely integrated.

8. In this case the First-tier Tribunal found that the appellant was not undergoing rehabilitation such that his expulsion would compromise his social rehabilitation. Although the First-tier Tribunal were not completely accurate in their description of what the appellant was doing with regards to his alcoholism, it cannot be concluded that if they had correctly referred to it, that there would have been a different conclusion reached. The conclusion reached was a conclusion open to the First-tier Tribunal on the evidence before them. There is no material error of law in the conclusion reached by the First-tier Tribunal as to rehabilitation and Essa.
9. The First-tier Tribunal addressed the impact on the appellant's wife and child in the determination. In particular in paragraphs 22, 23 and 26. The First-tier Tribunal state that

22. There is nothing to prevent the Appellant's wife and son returning to Poland with the Appellant, other than the fact that they would prefer to stay in the UK...

23. We have come to the conclusion, given that a lot of the Appellant's offending is related to his domestic situation that although the Appellant has family life in the UK this does not outweigh the public interest in the Appellant's deportation....

...

26. We considered the best interests of the child and accept that the Appellant's son would prefer to stay in the UK... Given that a lot of the Appellant's convictions relate to his domestic situation it may be that the Appellant's wife and child will choose to stay in the UK. This is a matter for them. The Appellant's wife and child are both Polish nationals and there is nothing to prevent them returning to Poland with the Appellant if they so wish. The appellant's son is not at a critical stage in his education in the UK and will be entitled to education if he returned to Poland.

10. It had not been submitted by or on behalf of the appellant that there was an error of law by the First-tier Tribunal in the decision making process followed by them. The First-tier Tribunal considered the appellant's personal conduct and reached a conclusion that was not the subject of challenge namely that his conduct represented a genuine present and sufficiently serious threat that affected one of the fundamental interests of society. The grounds in essence are a challenge to the final stage in consideration namely the proportionality of the decision and included in this is the rights of free movement of the appellant's wife and child, the best interests of the child and the overall circumstances. Mr Mills submitted that the First-tier Tribunal took fully into account that the deportation of the appellant from the UK would sever his family ties if his wife and child did not go with him. Mr Mills drew an analogy with a non – EU foreign criminal being deported and the possible ensuing separation for a British Citizen wife and child. He submitted that an EU national could not be in a stronger position than the British Citizen wife and child and that the situation facing this appellant and his family was similar. This appellant has been in prison and separated from his wife and child during those periods of imprisonment; the social work report refers to the wife not wishing to live with the appellant if he is drinking; a number of the crimes of which the appellant was convicted, although alcohol fuelled, were

directed at his wife. The First-tier Tribunal had found that it was not that the wife and child *should* go but that whether they went or not was the choice of the appellant's wife and child. Mr Mills submitted that the First-tier Tribunal had set out that it was a choice of whether to go or stay and this did not interfere with her rights of free movement.

11. The First-tier Tribunal state (in [19]) that they found the case difficult and took full account of the fact that the appellant's wife and child were present to support him. The free movement rights of the appellant's wife, although not specifically referred to in the First-tier Tribunal determination are one element of the proportionality assessment to be undertaken. The Tribunal was plainly aware of the wife's permanent residence and that she had made her home here for herself and the child. The Tribunal considered the best interests of the child and reached a conclusion that was open to it on the facts presented. Having assessed all of the circumstances, including the potential separation of the appellant from his wife and child, the First-tier Tribunal reached a conclusion that the deportation was proportionate.
12. Although a differently constituted Tribunal may have reached a different conclusion, the knowledge of the wife's status in the UK and their length of residence and the length of time the child had been in the UK and was attending school was plainly in the Tribunal's mind on reaching their decision. The Tribunal did not fail to consider all relevant matters in reaching its decision on the proportionality of the deportation.
13. There is no error of law such that the decision is set aside to be remade.

Conclusions:

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

I do not set aside the decision

The decision of the First-tier Tribunal stands.



Date 19<sup>th</sup> May 2015

Upper Tribunal Judge Coker