Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01133/2014

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 17th February 2015	**On 24th February 2015**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

WIKTOR KAMINSKI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In Person
For the Respondent: Mr M Diwncyz

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Quigley made following a hearing at Glasgow on 25th August 2014.

Background

2. The Appellant is a citizen of Poland born on 14th March 1996. He arrived in the UK with his parents when he was 3 years old on 4th May 1999. The family claimed asylum, which was refused on 12th February 2000, and the

subsequent appeal was dismissed on 4th September 2000. Thereafter the Appellant and his family were appeal rights exhausted.

3. On 16th March 2004 the family were granted indefinite leave to remain in the UK exceptionally outside the Rules.

4. Poland became a member of the European Union in May 2004.

5. On 19th April 2013 the Appellant, together with his older brother, was convicted of four counts of robbery and sentenced to two years at a young offenders institution. On 5th June 2014 a decision was made to make a deportation order against him as a consequence of his convictions under Section 3(5)(a) of the Immigration Act 1971 and Regulations 19(3)(b) and 24(3) of the Immigration (EEA) Regulations 2006 for his removal to Poland.

6. The Appellant, together with his older brother, came before Judge Quigley on 25th August 2014 and Judge Quigley dismissed both appeals. There is no appeal in the Upper Tribunal in relation to the older brother. Mr Diwncyz told me that a JR application had been lodged on 6th January 2015 but he had no further information.

The Grounds of Application

7. Grounds were submitted by Yorkshire Immigration Consultancy Service. They attack the Judge's recording of the submission that the Appellant should not be pursued for deportation because he was under the age of 18 years of age at the date of his sentence. It was said that he erred when it was the Home Office's own policy to consider whether the Appellant should be considered under the exceptions to automatic deportation since he was under the age of 18 when the offence was committed.

8. It was also argued that the Judge's Article 8 findings were flawed in relation to the two brothers.

9. On 30th September 2014 Judge Cruthers refused to grant permission in respect of the broader attack on the Judge's Article 8 findings which he described as no more than speculation as to what beneficial results might flow if the Appellant's older brother was deported but the younger brother was allowed to remain in the UK.

10. With respect to the second point, Judge Cruthers said that arguably Judge Quigley had not addressed the Home Office's policy on automatic deportation which provides for an exception where the foreign national offender was under the age of 18 at the date of the relevant conviction.

11. On 10th October 2014 the Respondent served a Reply stating that the grounds were misconceived. This was not a decision taken under the 2007 Act because the Appellant is an EEA national and therefore exempt from the automatic deportation provisions of the 2007 Act. The decision was taken under the EEA Regulations. The decision to deport was taken when the Appellant was 18, and there was nothing preventing the

Secretary of State from deporting someone who has committed criminal offences as a minor.

The Hearing

12. By the time that this appeal came before me the Appellant no longer had any representation. He said that he was a changed man and he had done a stupid thing which he regrets. This was his country and he wanted to stay.

13. Mr Diwncyz relied on his reply. In summary, he said that the Appellant fell to be treated as an EEA national even though he had indefinite leave to remain. He referred to Schedule 4 paragraph 6 of the 2012 Amendment Regulations and submitted that the decision to deport under the Regulations was lawful.

Findings and Conclusions

14. Two arguments appear to have been made before the original Immigration Judge in relation to the application of the EEA Regulations and the Immigration Rules.

15. It was the Appellant's submission that, since the Appellants were granted indefinite leave to remain on 16th March 2004, before Poland became a member of the EU, they did not need to prove that they had exercised their Treaty rights in order to remain in the UK lawfully and could therefore rely on the domestic law of the UK, i.e. the Immigration Rules, in order to challenge the deportation order.

16. The argument has no merit. The Appellant is an EEA national and accordingly, under the Regulations, may be deported under Regulation 19(3)(b) on the grounds that his removal is justified on grounds of public policy, public security or public health. He cannot demonstrate that the Secretary of State's decision to apply the Immigration (EEA) Regulations to him was unlawful.

17. Accordingly the deportation provisions of the 2007 Act do not apply, and neither do the Immigration Rules.

18. The argument seems also to have been made before the judge that the period of residence had been counted incorrectly, and the Appellant was entitled to the benefit of his 5 years residence in the UK before the accession of Poland to the EU.

19. According to paragraph 6 of Schedule 4 to the Regulations, where someone resided in the UK before the accession to the EU of their State of nationality, an individual will be able to rely upon residence under domestic UK legislation as part of their five year qualifying period for permanent residence only if, inter alia, they had leave to remain under the Immigration Rules.

20. However in this case the Appellant had no leave between 2000 and 2004 when he was appeal rights exhausted and remained in the UK unlawfully. He therefore cannot seek to benefit from paragraph 6 of Schedule 4, and cannot argue that his period of residence between 2000 and 2004 should count for the purpose of deciding whether Regulation 21(4) should apply, i.e. where a person has resided in the UK for a continuous period of at least ten years prior to the relevant decision where it may not be taken except on imperative grounds of public security.

21. The Appellant had continuous residence for the purposes of the Regulations for at least five years but less than ten because periods of imprisonment are not counted. Accordingly the relevant dates are between 16th March 2004, when the family was granted ILR, and April 2013.

22. The correct provision, which was applied by the Judge, is Regulation 21(3) which states that

> "a relevant decision may not be taken in respect of a person with a permanent right of residence under Regulation 15 except on serious grounds of public policy or public security."

23. So far as the merits of the decision are concerned, the Appellant has not been granted permission to argue that the Judge's decision was flawed, but in any event, this is a thoughtful, detailed consideration of all of the relevant factors and the conclusion reached was one open to him. He was entitled to conclude that the Appellant presents a medium risk of serious harm to the public, that he has family relatives in Poland who would support him, that he was fluent in the Polish language and that he would be able to readjust to life there. The grounds disclose no arguable error of law in the Judge's conclusions and were properly refused by the Judge who granted permission in respect of the automatic deportation policy point

Decision

24. The Judge did not err in law. The Appellant's appeal is dismissed.

No anonymity direction is made.

Signed Date

Upper Tribunal Judge Taylor