Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00310/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11th April, 2016	**On 15th July, 2016**

Before

Upper Tribunal Judge Chalkley

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RADOSLAW OZGOWICZ
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr E Tufan, a Senior Home Office Presenting Officer
For the Respondent: Miss C Markwell of Counsel, instructed by IMD Solicitors

DECISION AND REASONS

1. The appellant in this appeal is the Secretary of State for the Home Department and to avoid confusion I refer to her as being "the claimant". The respondent was born on 11th June, 1978, is male and is a citizen of Poland who entered the United Kingdom on 19th September, 2004.

2. On 11th November, 2015 the respondent was convicted at Portsmouth Crown Court of two offences of theft of cosmetics from his employers and conspiracy to transfer and convert criminal property. He was sentenced on those offences at the same Crown Court on 23rd February, 2015 and received a sentence of two years' imprisonment concurrent on each offence.

3. On 6th July, 2015 the claimant made a deportation order in respect of the respondent. The respondent appealed and his appeal was heard by First-tier Tribunal Judge Mitchell sitting at Hendon on 26th October, 2015. In his determination the judge noted the provisions of Regulation 21 of the Immigration (European Economic Area) Regulations 2006 and noted that the appellant claimed to have resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision. The judge also noted that the relevant decision was made on 6th July, 2015 and purported to apply *MG v Secretary of State for the Home Department*. The judge allowed the respondent's appeal, but the claimant sought and obtained permission to appeal to the Upper Tribunal asserting that the judge had misapplied *MG*.

4. In addressing me today Mr Tufan on behalf of the claimant pointed out that the ten year continuous period of residence must be counted back from the decision in question, which in this case is the deportation decision of 6th July, 2015. Unfortunately the appellant had been in prison from 23rd February, 2015. He *may*, however, still come within the category entitled to enhanced protection if he can show that he has resided in the United Kingdom during the ten years prior to the imprisonment, depending on an assessment of whether the integrating links have been broken. Mr Tufan suggested that that such an assessment had not been made and that there were insufficient findings for that assessment to be undertaken without hearing further evidence.

5. For the respondent, Miss Markwell suggested that what the judge did at paragraphs 25 and 26 was to undertake such an assessment. I told her that I was unable to accept that he did. All the judge did was to make the evidence from the respondent's former wife and from his sister which, substantially corroborated the respondent's account of the date of his arrival in the United Kingdom. The judge noted that the respondent's former wife was only able to corroborate his employment from December, 2005, which is when she first met him. The respondent's sister had been living with the respondent in the United Kingdom on a number of occasions from the time of his arrival in September, 2004 some years later. All the witnesses were consistent as regards the times that the respondent had been out of the United Kingdom. He returned to Poland on three occasions but the periods of absence from the United Kingdom could be measured, it was said, in a handful of weeks.

6. I confirmed to Miss Markwell that I did not believe that the judge had made sufficient findings of facts in order to be able to properly assess the

respondent's integration and I have concluded that the matter should be remitted to the First-tier Tribunal in order that further evidence can be obtained so that a proper assessment of the respondent's integration into the United Kingdom can be made in accordance with *MG*.

7. My estimation is that two hours would be sufficient before any judge other than First-tier Tribunal Judge Mitchell. I am told that the respondent does not need an interpreter, but given the consequences for him if the decision is not in his favour, I believe that a Polish interpreter should be booked.

Upper Tribunal Judge Chalkley
15 July 2016