



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

Appeal Number: OA064332015

THE IMMIGRATION ACTS

**Heard at Field House
On 16 May 2016**

**Decision & Reasons
Promulgated
On 24 May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

AN IMMIGRATION OFFICER

Appellant

and

Mr KRZYSZTOF SKRABA

(No Anonymity Direction Made)

Respondent

Representation:

For the Appellant: Ms S Whitwell, Senior Presenting Officer
For the Respondent: No attendance and not represented.

DECISION AND REASONS

1. This matter comes before me pursuant to permission having been granted by First-tier Tribunal Judge Mark Davies dated 12 April 2016. The appeal relates to a decision by First-tier Tribunal Judge B Cox promulgated on 20 October 2015. The Judge had allowed the appeal against the Respondent's

decision to refuse admission pursuant to Regulation 11 of the Immigration (European Economic Area) Regulations 2006. The appeal before me is that of the Immigration Officer, but to ease following this decision I shall continue to refer to Mr Skraba as the Appellant and the Immigration Officer as the Respondent.

2. The Judge had set out the background to the Appellant's appeal whereby an Immigration Officer at Calais had refused the Appellant entry to the United Kingdom because it was said that the Appellant's exclusion was justified on grounds of public policy because of his criminal convictions which had included robbery.
3. The Judge concluded that the Appellant's personal conduct did represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. However the Judge felt able to allow the appeal because he concluded that the last offence was in 2007 and the Respondent had not provided any evidence to suggest that following the Appellant's release from prison in 2007 that he had committed any further offences.
4. The Respondent's grounds of appeal contended that there was a misdirection of law arising out of a mistake of fact because, amongst other things, the Appellant was extradited to Poland in 2013 (the explanatory statement says 2014) and was convicted following having absconded and breached his bail conditions for which he served a further sentence of 6 months imprisonment.
5. During the hearing before me I invited Mr Whitwell to deal with paragraphs 10 and 11 of the Judge's decision which refers to this very aspect raised in the grounds as not having been taken into account. Mr Whitwell said that the real point was that the fact that the Appellant had absconded from Poland for his offences was the feature of the offending which needed to be given greater prominence and it was therefore wrong for the Judge to conclude that there were no further offences recorded against the Appellant since 2007. That is because there was the further sentence of imprisonment of 6 months in 2013/2014 and the continuing nature of the absconding/breach of bail.
6. I can see that because the Judge was dealing with the appeal on the papers therefore the clarification now being provided was probably not as clear at the time of the hearing before him. Therefore albeit with initial reluctance, I conclude that there is a material error of law in the Judge's decision.
7. I shall therefore set aside the decision of the Judge. Upon remaking the decision I conclude that the Appellant represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society because of his offending and the serious nature of the offences recorded against him. The fact that the Appellant was at large for such a

long period of time and thereafter the fact that he was imprisoned again in 2013/2014 indicates the serious way in which the Polish authorities viewed his offending and the fact that he had breached his bail conditions by absconding for so many years. Therefore in assessing Regulations 19 and 21 of the Immigration (EEA) Regulations and in particular Regulation 21(5) (c) the Appellant's appeal has to be dismissed.

8. I conclude that the Appellant does have a propensity to re-offend because the Respondent has proved that is so.
9. I remake the decision and dismiss the Appellant's appeal against the Immigration Officer's decision refusing him entry to the United Kingdom.

Notice of Decision

The decision of the First tier Tribunal Judge involved the making of a material error of law and is set aside.

I remake the decision and dismiss the Appellant's appeal.

No anonymity direction is made.

Signed

Date: 16 May 2016

Deputy Upper Tribunal Judge Mahmood