Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00241/2017

THE IMMIGRATION ACTS

Heard at the Royal Courts of Justice	**Decision & Reasons Promulgated**
On 30th April 2018	**On 04th May 2018**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between:

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ROBERT JURCZEWSKI
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr N Bramble, Home Office Presenting Officer
For the Respondent: No appearance

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State, I shall refer to the parties as in the First-tier Tribunal. The Appellant is a citizen of Poland born on 16 June 1978. His appeal against deportation was allowed by First-tier Tribunal Judge R G Walters on 12 February 2018 on human rights grounds.

2. Permission to appeal was granted by First-tier Tribunal Judge Parkes on 8 March 2018 on the following grounds:

> "2. The judge found that the Appellant had acquired the right permanent residence in the UK the judge reviewed the Appellant's extensive criminal record in Poland and the UK and that the Appellant had not taken steps to deal with his alcoholism. The appeal was allowed as it would be disproportionate with regard to the effect on his family in the best interests of the children.
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> 3. The grounds argue that the judge erred in the findings on family life, the letter relied on pre-dated the Appellant's release and his wife did not attend the hearing of the appeal. There was no evidence of a very strong Article 8 claim and no proper assessment why the family could not relocate to Poland.
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> 4. The judge gives no reason why the children would not be able to adapt to life in Poland, children move between countries without speaking the new language on a daily basis and in time make the necessary adjustments, it is not clear why this family could not do so. More troubling is that the Appellant's wife did not attend the hearing to give oral evidence when the hearing took place in central London. In the circumstances it is arguable that the judge place significantly more weight on the family circumstances than the evidence justified and overlooked the public policy considerations given the Appellant's lengthy and persistent criminal record."

3. The Appellant did not attend the hearing. He had been released from prison and was not held in immigration detention. The notice of hearing was served on him at his home address. There was no correspondence from him or his wife indicating that the Appellant had changed address. I was satisfied that the appeal notice was properly served and I heard the appeal in the Appellant's absence.

Submissions

4. Mr Bramble relied on the grounds of appeal and submitted that the evidence before the judge was insufficient to support his findings that the Appellant had established family life in the UK and it could not continue on return to Poland. The judge failed to give reasons why the Appellant's human rights outweighed the public interest in deportation.

Discussion and Conclusion

5. The appellant was 39 years old at the date of hearing. He committed his first offence at the age of 20 in Poland in 1997. He has 11 convictions for 14 offences including indecent assault, assault occasioning actual bodily harm, affray, robbery, threats to kill, burglary, threatening behaviour, destroying properly, battery, committing an offence during the operational period of a suspended sentence and possessing a class B controlled drug. The Appellant has been imprisoned on numerous occasions for these offences. His last conviction was on 17 February 2017 for possessing a controlled drug and common assault. He was sentenced to 18 weeks imprisonment.

6. The Appellant was released from prison in October 2017. He did not attend the CMR hearing on 18 October 2017 and he did not attend the First-tier Tribunal hearing on 22 December 2017. Neither the Appellant nor his wife attended the hearing before me and no further evidence has been submitted.

7. The Appellant responded to the notice of deportation by letter dated 29 March 2017 which stated: "As every time when I cause trouble I have been drinking alcohol we decided also to sort this issue. After previous experience we already know that help which I can get from Probation Office will be limited to attending some groups which did not change lots, we decided to seek for medical treatment in relation to my alcohol problem. After research, we found contact to medical services which are offering an Esperal implant and I am desperate to get one and it will be priority to sort it immediately after release." He stated that he had been attending anger management courses and courses against alcohol and drug addiction whilst in prison.

8. In relation to family life, the Appellant stated: "I have a genuine and subsisting parental relationship with my children. They are live permanent in the UK. Two of them were born here and United Kingdom is the country where is their home. They do not even speak Polish, and their first language is English. They are attending school in the UK and are achieving a high level of learning. As a confirmation, please find enclosed school report an official letter from school confirming above statement.
They are sending me drawings and letters daily along with a photographs and daily emails from my wife. Our family connection is very strong and despite the incident which happened we are sure that with a little help I can change my behaviour because I do not want to lose my family. I am sure that my eventual deportation will harm children because even currently when I am in prison, they miss me so much, they are crying and asking when I will be back home. When they visit me, they do not want to go back home without me. My wife informed me that this situation is upsetting them a lot and every evening is difficult for them as before we had a daily bedtime stories together before they fell asleep. We cannot even imagine living separate. In accordance to above, my eventual deportation will break not only mine right to have a family live, but my wife's and children's as well, as I mentioned above, they are not able to move to Poland in case of eventual deportation. Together with my wife we decided that after release from the HMPS I will be back to work. We already make arrangement with my contractor, who I had worked for, and immediately after release date I can come back to work"

9. In addition to this letter, the evidence before the First-tier Tribunal of the Appellant's family life consisted of the birth certificates of his three children, a letter dated 29 March 2017 from Hounslow Town Primary School and a school report for his eldest son for the year 2016/2017. His eldest son was born in Poland on 19 April 2009. His daughter was born in the United Kingdom on 6 May 2011 and his youngest son was born in the

United Kingdom on 11 December 2014. The letter from school, where the elder two children were currently educated, stated that their attendance had been very good and "both parents were involved in bringing and collecting the children from school, but due to the recent change in the family circumstances the children's mother, Mrs DJ, has been the main carer." The letter stated that the children's mother in particular was extremely supportive and proactive. The letter concluded that the children are a credit to their parents and the school.

10. The judge found that this letter was strong evidence that the Appellant lives together with his wife and children and has an active involvement with the older two children. He found that their best interests were to remain living with both parents. At [44] the judge stated: "O, dob 10.01.09, arrived in the UK with his parents when only a few months old. In reality (except for some holidays) he knows no other country but the UK. He is now 17 and still in full-time education."

11. The judged found that the elder two children would not be able to adapt to life in Poland or to such a drastic change in the medium of instruction of education. He accepted that there was no evidence as to whether or not the children spoke Polish, but he found, on the balance of probability, it was likely to be less than the fluency required to be educated in that language.

12. At [46] the judge considered the private life rights of the appellant's wife. He found she had committed no crime and was an admirable parent. She could not be expected to abandon her life in the UK where she has been for 17 years in order to settle in Poland with her children and husband. The judge found that the Appellant had a genuine and subsisting relationship with his wife and children.

13. The judge concluded:

> "47. I found that the Appellant's previous convictions and their nature are such that he has the propensity to reoffend. There was no evidence before me that he has taken adequate steps to deal with his alcoholism. On the other hand, it is only a few weeks since he has been released from prison.
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> 48. I would therefore have found that the Respondent was justified in deporting the Appellant on serious grounds of public policy and security despite the fact that the Appellant has a right permanent residence.
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> 49. The only matters which 'save' the Appellant from deportation orders family. Looking at all the evidence, I find that their rights render it disproportionate to deport the Appellant."

14. I find that the evidence before the judge was insufficient to show that he had a genuine and subsisting relationship with his wife and with his children. The letter from Hounslow Town Primary School predated the Appellant's release from prison. The assertions made in the Appellant's letter of 29 March 2017 were not support by evidence which the Appellant

ought to have been able to produce. The Appellant and his wife failed to attend the hearing to give oral evidence. There was no witness statement or other evidence from the Appellant's wife.

15. The Appellant entered the UK on 26 August 2009 with his wife and eldest son who was then four months old. His wife and child had not been residing in the UK for 17 years as stated by the judge at [44] and [46]. This error of fact is significant such that it amounts to an error of law. The Appellant's oldest son has been living in the UK for nine years not 17. There was insufficient evidence to show that it would not be reasonable for him to return to Poland as part of the family unit. The judge's assessment of proportionality was based on incorrect facts.

16. Accordingly, I find that the judge erred in law in his assessment of Article 8. There was insufficient evidence to support his finding that family life existed at the date of hearing and that the Appellant had a genuine and subsisting relationship with his wife and his children. I set aside the decision and remake it.

17. There is insufficient evidence to show that the Appellant has a genuine and subsisting relationship with his wife or a genuine and subsisting parental relationship with his children. There was no evidence before me post-dating the Appellant's release from prison. His assertions in his letter was unsupported by evidence which the Appellant ought to have been able to produce. He refers to drawings and letters, but none were submitted in support of this appeal. The Appellant has failed to attend the hearing and there was no evidence from his wife. The letter from the school indicates that the children were, at that time, being cared for by their mother. There was insufficient evidence before me to show that the Appellant had resumed his parental responsibilities on release from prison.

18. The Appellant's eldest son had been living in the UK for nine years. Although the Appellant asserts that he does not speak Polish, there was no other evidence to support this assertion. Both parents are from Poland and there is no mention in the school report or otherwise of the language spoken at home. The Appellant's son has been educated in English and is doing well at school. He is of an age where his best interests are to remain with his parents and there is insufficient evidence to show that he could not adapt to a new school on return to Poland. I find that there was insufficient evidence to show that it would be unreasonable to expect him to leave the UK.

19. The Appellant's daughter is not a qualifying child. She is nearly seven years old. Although she was born in the UK and has been educated here, there was insufficient to show that she would not be able to adapt to a new school in Poland. Her best interests are to remain with her parents. The Appellant's youngest son is three years old and his best interests are to remain with his parents.

20. The Appellant's wife is Polish. There was insufficient evidence to show that she had a right of residence in the UK or that separation from her husband would be unduly harsh. There were no very significant obstacles to re-integration on the evidence before me. There was insufficient evidence to show that the Appellant's deportation would give rise to consequences of such gravity to amount to an interference with family life.

21. The Appellant is a serious threat to one of the fundamental interest of society. This finding was not challenged. The Appellant's deportation under the Immigration (EEA) Regulations 2016 is justified on grounds of public policy. On the evidence before me, he has failed to show that he has established family life or that family life could not continue in Poland. In any event, I find that, on the evidence before me, the public interest outweighs the Appellant's right to family and private life and any interference with the Appellant's Article 8 rights, and those of his family, would be proportionate.

Notice of Decision

The Respondent's appeal to the Upper Tribunal is allowed.

The decision of 12 February 2018 is set aside.

The Appellant's appeal against deportation is dismissed under the Immigration (EEA) Regulations 2016 and on human rights grounds.

No anonymity direction is made.

J Frances

Signed Date: 30 April 2018

Upper Tribunal Judge Frances