



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DA/00576/2017

THE IMMIGRATION ACTS

Heard at Field House  
On 13 November 2018

Decision & Reasons Promulgated  
On 27 November 2018

Before

THE HONOURABLE MRS JUSTICE ANDREWS DBE  
UPPER TRIBUNAL JUDGE PLIMMER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR PIOTR WOJTUKIEWICZ

Respondent

Representation:

For the Appellant: Mr D Clarke, Home Office Presenting Officer  
For the Respondent: Ms U Miskiel, Counsel, instructed by Justitia Chambers

DECISION AND REASONS

1. The appellant ('the Secretary of State') has appealed against a decision of the First-tier Tribunal ('FtT') dated 9 March 2018 in which it allowed Mr Wojtukiewicz's appeal ('the respondent') on EEA grounds, against a decision to deport dated 7 September 2017.

**Background**

2. The respondent is a citizen of Poland. He arrived in the United Kingdom ('UK') with his parents and sister in 2006, when he was around 14 years old, and has resided in the UK since then. He has an unimpressive criminal history. More recently, on 23 February 2017 he was convicted of making a false representation in order to make a gain for himself or another or to cause loss to another. This

involved his participation in an enterprise in which he was involved in a fraudulent road traffic accident to enable him to claim compensation. That then led to a sentence of seventeen months' imprisonment. Prior to that, his criminal history can be summarised as including various types of offences, some involving cannabis, some involving breaches of previous orders but all taking place between the years 2014 and 2016.

3. By the time the matter came before the FtT on 23 February 2018, the respondent was putting forward the case that he had learnt from his previous criminal offending and that with the assistance of his parents and the Probation Service he was a changed man who had proactively turned around his life.

### **The FtT decision**

4. The FtT decision is undoubtedly a detailed one, extending to some 43 pages. The FtT summarised the respondent's criminal offending in some detail at paragraphs 1 to 3. The FtT set out the Secretary of State's case in comprehensive terms at paragraph 5. The FtT then turned to the detailed grounds of appeal on behalf of the respondent at paragraph 7.
5. The FtT then summarised the evidence that was before it. That begins at paragraph 22 wherein the FtT referred to an OASys assessment completed on 3 August 2016. The FtT did not merely refer to that assessment but summarised a number of points that emerged from the report. One of those points was that at the time, the respondent was assessed as presenting a medium risk to members of the public. Risk factors were identified in the report as: (i) alcohol and cannabis use; (ii) lack of funds and an absence of secure accommodation, and (iii) lack of support from family and friends. The FtT also referred to a second OASys assessment and summarised the two points that emerged from that assessment as follows:
  - (a) The respondent was recorded as being motivated to address his offending and quite capable of changing and reducing his offending behaviour.
  - (b) He had agreed and signed a plan intended to reduce the risk of serious harm and of offending-related matters.
6. The FtT then observed at paragraph 24 that because the OASys assessments were completed before the 2017 conviction and before he served his sentence for that conviction they are "*of only limited importance in determining this appeal*".
7. Having acknowledged the OASys assessments and addressed their contents right at the beginning, the FtT then turned its attention to the evidence provided by the witnesses. The respondent gave evidence, and again, that is summarised in a great deal of detail at paragraph 25(a) to (k). The parents also gave evidence and that is also set out fully at paragraphs 26(a) to (h) and 27(a) to (g).

8. The FtT then turned to the documentary evidence before it. That included coursework that was done whilst in prison, various certificates gained whilst at prison, the respondent's employment record both past and present, and other supporting evidence. Having summarised the evidence, at paragraph 29 the FtT reminded itself that the respondent's parents could not be treated as wholly independent witnesses and that there was no documentary evidence to vouch for precisely what they said about various matters. The FtT was clearly well-aware of the weaknesses in the respondent's case, particularly those identified by the Secretary of State. The FtT was therefore mindful of the Secretary of State's concerns as set out in writing and as put during the hearing and expressly directed itself to those concerns. Having done so, the FtT found at the end of paragraph 29 that it was satisfied that the parents gave "*entirely honest, straightforward and truthful*" evidence and that they were "*reliable and conscientious parents and members of the community*". The FtT did not leave it there but then set out four specific reasons for making that finding, labelled (A) to (D), before saying this:

"I therefore entirely accept their evidence in its entirety, including the family history of arrival in the United Kingdom in 2006, the circumstances in which their relatives in Poland live, their inability to assist Mr W if he is returned to Poland and that there has been a substantial change for the better in Mr W since his release from prison."

9. The FtT then set out specific findings of fact relevant to the case that was being made on behalf of the respondent at paragraph 30, before going on to deal at paragraph 31 with the finding that the respondent would be at a substantial disadvantage on the labour market in Poland. Again, reasons are given for that finding at (a) to (e) of paragraph 31.
10. At paragraphs 32 and 33, the FtT dealt with perhaps the most significant issue that was before it: whether or not the respondent represents a present threat to the public security of the UK. The FtT acknowledged at paragraph 32 that it did not have independent documentary evidence vouching for what the respondent had said or an up-to-date probation report. Nevertheless, it accepted the respondent's evidence and in particular accepted that he had ceased using cannabis, that he had now recognised that the life he was living until 2015 was wrong and he regretted his actions, and that he was now enjoying working for his father and intended to avoid all criminality in the future.
11. The FtT gave further reasons for those findings at paragraph 33, concluding that those observations were consistent with the parents' opinions. Significant weight was placed on what they had said. In addition, the FtT observed that the respondent had been successfully working under the supervision of his own father.

12. The FtT also referred to reports of good conduct whilst serving his sentences of imprisonment including the reports that described his good work in prison, which the FtT had referred to earlier. Then finally the FtT said this:

“Although Mr W has the wretched and shameful history of past offending which I have set out above, that offending was all committed when he was a comparatively young and immature young man. The behaviour of that kind is (regrettably) typical of immature and thoughtless young men who give no thought to the actual and potential consequences of their actions or to the harm which they may do. It is not surprising, and there is nothing inherently improbable or contrary to known fact in the proposition that, having now reached the age of 25, having served two sentences of imprisonment and having been served with a deportation order, he should now have learnt his lesson and ‘grown up’. I am satisfied that he has. I am, additionally, satisfied that Mrs KW’s analysis, that he was a ‘stubborn’ young man who lacked foresight (‘lack of prediction’) and would not learn unless given a sharp lesson was accurate. He has been given that sharp lesson”.

13. The FtT went on to deal with his prospects of rehabilitation and then at paragraph 36 indicated that it was not satisfied that the respondent’s personal conduct represented a genuine, present and sufficiently serious threat affecting any of the fundamental interests of society. The FtT provided its reasons for this at paragraph 36(e) to (f). The most important of those is (d) wherein the FtT refers to that which had already been said at paragraphs 32 and 33 and specifically indicated that it was satisfied that the three risk factors identified in the OASys report were no longer present.
14. Having decided that the respondent did not pose a present and serious threat, and that it would not be proportionate for the respondent to be removed in any event, the FtT allowed the respondent’s appeal.

### **Appeal to the Upper Tribunal (‘UT’)**

15. The Secretary of State appealed against that decision and permission was granted by Deputy UT Judge McGeachy in a decision dated 9 August 2018.
16. At the hearing before us, Mr Clarke clarified the grounds of appeal, given that they were not numbered or set out as clearly as they might be in the written grounds of appeal. He began his submissions by acknowledging the proposition in MC (Essa principles recast) Portugal [2015] UKUT 520 (IAC) that it is only if the personal conduct of the person concerned is found to be to represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society that it then becomes relevant to consider whether the decision is proportionate. Mr Clarke was therefore content to focus his submissions on ground 1, grounds 2 and 3 dealing more generally with proportionality. We did not need to hear from Ms Miszkiel.

17. We therefore now turn to the Secretary of State's first ground of appeal. Mr Clarke clarified that the submission relied upon by the Secretary of State was that the FtT failed to take account of the OASys risk assessments and failed to consider that evidence in the round with all the other evidence. We have already described in some detail the structure of the FtT's decision. When that is read as a whole it is clear to us that the FtT was well aware of not just the risk assessments themselves, but of the entirety of their contents. The FtT was also aware that there were some tensions between the assessment of medium risk based on the identified risk factors, and the opinions articulated by the respondent and his parents that he had turned his life around.
18. In our judgment, when the decision is read as a whole, the FtT has set out in rather painstaking detail reasons why it was prepared to accept the evidence adduced on behalf of the respondent which updated the position vis-à-vis the risk assessment prepared in 2016. The FtT's observation at paragraph 24 that the OASys assessments were only of limited importance must be seen in the context of the chronology of this appeal. Those OASys assessments were dealing with the position before the more serious of all the offences and also before the more significant period of imprisonment, with all that this involved for the respondent and his parents. In any event, as the FtT noted at [23] the OASys report assessed the respondent as being motivated and capable of changing and reducing his offending behaviour, and the FTT found that with the passage of time he had been successful in this.
19. We do not accept the submission that the FtT regarded the OASys reports to be irrelevant. Indeed, it is clear that the FtT took this evidence into account but was entitled to accept and prefer the more up-to-date evidence from the respondent and his parents, together with other documentary evidence. Those findings might be described as generous or optimistic, but they are not perverse. In so far as the grounds of appeal challenge these findings, this constitutes a mere disagreement with the FtT's factual findings.
20. It follows that the FtT was entitled to reach the conclusion it did that the respondent's personal conduct did not represent a genuine, present and sufficiently serious threat, for the reasons it has provided.
21. That is enough to dispose of this appeal because if, as we have found, the FtT was entitled to reach that conclusion then that is the end of the matter, as Mr Clarke pragmatically recognised (in the light of Essa (supra)), when making his helpful submissions to us.

### Decision

22. The FtT decision does not contain an error of law and we do not set it aside.

Signed

Date

Upper Tribunal Judge Plimmer

21 November 2018