



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00578/2017

THE IMMIGRATION ACTS

Heard at Field House

Decision and Reasons Promulgated

On 14 May 2018

On 21 May 2018

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

M D K (POLAND)
[ANONYMITY ORDER MADE]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Andrew Jones, solicitor with Thompson & Co solicitors

For the respondent: Mr David Clarke, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity order

The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the

original appellant, whether directly or indirectly. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

Decision and reasons

1. The appellant appeals with permission against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 9 March 2017 to deport him to his country of origin on public policy grounds, pursuant to the Immigration (European Economic Area) Regulations 2016. The appellant is a citizen of Poland.
2. The appellant has a number of serious criminal convictions in Poland before coming to the United Kingdom, and also two criminal offences committed in the United Kingdom.

Background

3. The offences in Poland were as follows. On 9 July 2001, he was convicted at Ostroda District Court of using threatening, abusive or insulting words or behaviour, with intent to cause fear or provocation of violence. He was sentenced to 1 year's imprisonment, suspended for 4 years (that is, until 9 July 2005). However, on 28 August 2001, a little under two months later, and within the period of suspension, the appellant was convicted at the same Court of assault occasioning actual bodily harm. He was sentenced to 14 months' imprisonment.
4. On 31 January 2002, again at Ostroda District Court, the appellant was convicted of using threatening, abusive or insulting words or behaviour with intent to cause fear or provocation of violence. He was sentenced to 6 months' imprisonment, suspended for 3 years (that is, until 31 January 2005).
5. However, within the period of the second suspended sentence, on 31 March 2003, the appellant was convicted of rape by Elblag Regional Court and sentenced to 4 years 6 months imprisonment.
6. On 2 June 2004, the suspended sentences of 9 July 2001 and 31 January 2002 were revoked, and replaced with custodial sentences of 1 year and 6 months respectively. The appellant's evidence to the First-tier Tribunal was that in Poland he was a bad person, that he had alcohol problems, and that he served six and a half years' imprisonment there. When he went to see his father after his release, his father slammed the door in the appellant's face.
7. The appellant came to the United Kingdom in 2009, on his account. He is required to be on the Sex Offenders Register here, because of his rape offence in Poland.
8. On 1 July 2009 he was arrested driving a car without a licence or road tax. On 1 September 2009, he was convicted of driving without a licence and failing to display a vehicle licence. He was fined £50. He lost his car as a result of that incident.
9. On 18 July 2015, some 6 years after the driving offence, the appellant was convicted of common assault (the victim was his partner) and at his sentencing hearing on 26 August 2015, he was given a community order with unpaid work and rehabilitation

requirements. The appellant had become angry with his partner, and had used a knife to stab a mattress, frightening her. It is not suggested that the sentencing Court was aware of his Polish criminal history when sentencing him.

10. The appellant was served with notice of liability to deportation on 21 February 2017. Shortly thereafter, he was detained. The decision letter was issued on 9 March 2017, but the appellant did not appeal in a timely fashion. His appeal to the First-tier Tribunal was lodged on 6 October 2017 and was allowed to proceed out of time.

Evidence before the First-tier Tribunal

11. Both the appellant and his partner gave evidence to the First-tier Tribunal in Polish. The partner is also a Polish citizen and Polish is the language spoken in their home. The United Kingdom offences were committed while they were living together. They have a child, who has autism. The First-tier Tribunal had the benefit of the oral evidence of the appellant and his partner, and of a report from the child's paediatric consultant, Dr Aziz Siddiqui, and various NHS documents confirming the autism diagnosis.
12. The appellant's partner told the First-tier Tribunal that she came to the United Kingdom in 2006 to study and earn some money, but ended up staying longer than originally planned. Before that, she had worked in Poland. The appellant's partner knew of his Polish conviction for rape, but had told her family only that he had a criminal record, not what it was. She was unsure whether there would be work for the appellant as a builder in Poland. The appellant was not in contact with his family, with whom he did not have a good relationship.
13. For the first four years of the child's life, the appellant's partner worked, and he looked after the child; in 2015, they decided together that he was not good at the child care and that he would work, and his partner would stay home. They lived in Reading, where the appellant worked as a builder, and in car washing and valeting. Later, the appellant moved to London, but his partner and the child remained in Reading, where she had just started a special school. After 8 months, the appellant rejoined his family in Reading.
14. The appellant's monthly income includes child tax credit of £516 and child benefit of £82. He has an Accession State Registration Scheme certificate dated 21 May 2010, and produced some payslips and forms P60 going back to 2010, to support his claimed employment in the United Kingdom. The appellant's partner has a similar Registration Certificate dated 4 January 2007.
15. Dr Aziz Siddiqui's report dated 14 December 2016, recorded that the child could follow simple instructions given in Polish, and that she received individual support from a Polish teaching assistant. She did not converse with anyone, to his knowledge, so her involvement with English language was small; in any event, the child was largely non-verbal, with little eye contact, little use of gesture, and was very passive. The report mentions only the mother as a parent.

16. The appellant's partner told the Tribunal that her daughter did not speak at all, but they found a therapy for the child in Poland which was unavailable in the United Kingdom. The appellant's partner had taken her there for treatment on three or four occasions, the most recent on 28 August 2017. The language in the family home was Polish, but when she spoke, the daughter spoke only English to her mother, who responded in Polish. In Poland, where she went without the appellant, the partner stayed with her mother while the child received treatment. She had a married sister and an aunt there too. Travel to Poland was difficult, as the child had no passport.

First-tier Tribunal decision

17. The First-tier Tribunal applied the provisions of the 2016 EEA Regulations and dismissed the appeal. He had regard to the best interests of the child pursuant to section 55 of the Borders, Citizenship and Immigration Act 2009 but found that as both parents speak only Polish to her, and her treatment is in Poland, although she is a qualifying child it is reasonable to expect her to return to Poland with her parents, if her mother chooses to go with her father.

18. The decision was proportionate under Regulation 27 of the 2016 Regulations, in particular Regulation 27(5)(c) and there was no suggestion that Article 8 ECHR either was engaged, or would be breached, as the evidence was that the family would return to Poland together. The decision was not unduly harsh in relation either to the appellant or his partner. Section 117C was inapplicable but had it applied, would not have assisted the appellant.

19. The appeal was dismissed both under the 2016 Regulations and on human rights grounds.

20. The appellant appealed to the Upper Tribunal, arguing that there was no assessment at [100] in the decision of the seriousness of the risk which the appellant now presented to the United Kingdom under Regulation 27(5)(c) or 27(5)(e), and that the decision had been impermissibly made based solely on the appellant's past criminal convictions.

Permission to appeal

21. Permission to appeal was granted on the basis that the Judge had failed to carry out an assessment under Regulation 27(6) of the 2016 Regulations.

Rule 24 Reply

22. There was no Rule 24 Reply on behalf of the respondent.

23. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

24. In relation to Regulation 27(5)(c), Mr Jones for the appellant argued that the offences committed in the United Kingdom were insufficiently serious to permit the United Kingdom to remove the appellant. The appellant relied on the decision of the Court of

Justice of the European Union in *K. () and allegations de crimes de guerre* (*Citizenship of the European Union - Right to move and reside freely within the territory of the Member States - Restrictions - Judgment*) [2018] EUECJ C-331/16, handed down on 2 May 2019, a decision on a person previously the subject of an Article 1F exclusion decision.

Discussion

25. It is not suggested that the appellant while in the United Kingdom had any more than the basic EEA protection from removal: the evidence before the Tribunal does not support a finding that he ever acquired a permanent right of residence here.
26. The appellant was removed to Poland on 11 March 2018. There is no further witness statement from him setting out his circumstances there, or whether he is working.
27. It is incorrect to say that there is no assessment of the Regulation 27(6) factors (see [87]-[94] of the decision). That is an adequate assessment of all of the factors listed and the basis on which permission to appeal was granted cannot succeed.
28. As regards Regulation 27(5)(c), that Regulation is set out at [100] in the decision of the First-tier Tribunal. The Judge's observations, although brief, are sufficient, in the context of the decision as a whole:

“... [the respondent's deportation] decision is partly based on convictions in the United Kingdom as showing that the appellant is not wholly of good character, but mainly on public policy grounds. The fundamental interests of society will include an unwillingness to accept foreign nationals convicted of the very serious crime of rape.”
29. The appellant had a serious criminal history in Poland, including offences committed while the subject of a suspended sentence, and rape. The offences committed in the United Kingdom show a similar disregard for the normal constraints of society: to drive a car with no licence or road tax is not a minor matter should an accident occur. The second offence, which was the index offence for the deportation, is very similar to two offences committed in Poland, in that the appellant behaved in a frightening way, stabbing a mattress with a knife, and that the United Kingdom Court considered that to amount to actual bodily harm.
30. There is more than sufficient evidence here for the respondent to have concluded that, based on the appellant's personal conduct, he presents a genuine, present and sufficiently serious threat to one of the fundamental interests of society and that he should be removed, as he has been.
31. No arguments were advanced before me under Article 8 ECHR or section 55 in relation to the child's best interests. In relation to both those provisions, I am satisfied that the First-tier Tribunal gave proper, intelligible and adequate reasons for the conclusions it reached thereon.
32. The decision of the First-tier Tribunal is therefore upheld.

DECISION

33. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law
I do not set aside the decision but order that it shall stand.

Date: 16 May 2018

Signed *Judith AJC Gleeson*
Upper Tribunal Judge Gleeson