Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00108/2018

THE IMMIGRATION ACTS

Heard at Newport	**Decision & Reasons Promulgated**
On 15 February 2019	**On 21 March 2019**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MAREK [W]

Respondent

Representation:
For the Appellant: Mr C Howells, Senior Home Office Presenting Officer
For the Respondent: Ms L Dickinson, Fursdon Knapper Solicitors

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State, for convenience I will refer to the parties as they appeared before the First-tier Tribunal.

Introduction

2. The appellant is a citizen of Poland, and therefore is an EEA national, who was born on 13 November 1978. He has lived in the United Kingdom since May 2006. Previously, whilst in Poland, he was convicted (at least on the Secretary of State's case) on 15 May 2005 of two offences – attempted robbery with a firearm, imitation firearm, shotgun or air weapon and obtaining property by deception. He was sentenced to three years' imprisonment.

3. Whilst in the United Kingdom, it is accepted that the appellant has acquired a permanent right of residence as an EEA national based upon a period of five years' employment between September 2006 and September 2011.

4. Whilst in the UK, the appellant formed a relationship with another Polish national ("DK") and they have two sons now aged 12 and 7 years old.

5. On 22 September 2016, the appellant was cautioned by the Devon and Cornwall Police for shoplifting. Further, on 1 September 2017, the appellant was convicted at the Bournemouth Crown Court of two offences, namely assault occasioning actual bodily harm contrary to s.47 of the Offences Against the Person Act 1861 and of attempting to pervert the course of justice. He was sentenced to four months and six months' imprisonment consecutively on those two counts, making a total of ten months' imprisonment. Those offences arose in the context of the breakdown of his relationship with DK in May 2016. The former involved domestic violence against DK and the latter involved subsequent threats made to DK if she did not drop the prosecution against him for that offence.

6. The appellant was in prison from 1 September 2017 until 30 January 2018. Thereafter, he was detained in immigration detention until he was released on 15 June 2018.

7. On 26 January 2018, the Secretary of State made a decision to deport the appellant pursuant to the Immigration (European Economic Area) Regulations 2016 (SI 2016/1052) (the "EEA Regulations 2016").

8. The Secretary of State did not accept that the appellant had resided in the UK for a continuous period of five years in accordance with the EEA Regulations 2016 (or its predecessor) and, therefore, did not accept that he had acquired a permanent right of residence. The Secretary of State concluded that, having regard to the appellant's offending both in Poland and in the UK, that he had a propensity to reoffend and represented a "genuine, present and sufficiently serious threat affecting one of the fundamental interests of society". Further, given his circumstances, the Secretary of State concluded that his deportation would be proportionate. As a result, the Secretary of State concluded that the appellant's

deportation was justified on grounds of public policy under reg 27 of the EEA Regulations 2016.

The Appeal

9. The appellant appealed to the First-tier Tribunal. Judge Andrew allowed the appellant's appeal. The judge found that the appellant could only be removed on "imperative grounds of public security" as he had resided in the UK for a continuous period of at least ten years (see reg 27(4)(a) of the EEA Regulations 2016). The judge found that the appellant was not at risk of reoffending and that, in any event, his two offences in Poland and the UK did not reach the "high threshold" of establishing "imperative grounds of public security".

10. The Secretary of State appealed to the Upper Tribunal with permission. In a decision dated 3 July 2018, UTJ Rintoul set aside the decision of the First-tier Tribunal. He accepted that the judge had failed properly to consider whether the appellant could establish the required residence for ten continuous years prior to the decision to deport him as she had failed to take into account the impact, if any, of the period of imprisonment following his conviction in the UK. Judge Rintoul accepted, however, that the appellant had at least established a permanent right of residence in the UK. He set aside the judge's other findings in relation to a lack of propensity to reoffend and adjourned the appeal in order for the decision to be remade in the Upper Tribunal.

11. As a consequence of a transfer order dated 10 August 2018, the appeal was listed before me in order to remake the decision.

The Issues

12. It is accepted that the appellant has been resident in the UK since May 2006. His only periods of absence from the UK, set out in his statements and oral evidence, were two short visits to Poland in 2013 (to attend the christening of his brother's daughter) and in 2014 (to attend his mother's funeral).

13. Mr Howells, who represented the Secretary of State accepted that the appellant had established, based upon his employment in the UK, a permanent right of residence. That was, of course, also accepted by UTJ Rintoul. It is clear from the evidence set out in Judge Andrew's decision that that period of employment ran from September 2006 to September 2011 when the appellant was employed by Johnsons Stalbridge Linen Services (see para 18 of Judge Andrew's decision).

14. Further, it is accepted that the appellant has, therefore, both a permanent right of residence and was, at the date of the Secretary of State's decision to deport him on 26 January 2018, been resident in the UK for a period of eleven years and eight months.

15. Whilst Mr Howells accepted that the appellant's deportation could only be justified on "serious grounds of public policy" by virtue of reg 27(3) based upon the appellant's permanent right of residence, he did not accept that the appellant had established a continuous period of ten years' residence prior to the deportation decision on 26 January 2018. Mr Howells contended that the appellant's imprisonment between 1 September 2017 and, when he was released, on 30 January 2018 broke that period of continuous ten years' residence by negating his integration in the UK.

16. Mr Howells, however, accepted that if the appellant could establish the ten years' continuous residence and that his deportation could only be justified on "imperative grounds of public security" under reg 27(4)(a), the appellant's offending did not reach the high threshold required to establish that ground for deportation. On that, he was clearly right that the appellant's offending (or risk of future offending) comes no-where near reaching the high threshold of "imperative grounds of *public security*".

17. The first issue which must, therefore, be determined in this appeal is whether the appellant can only be deported on "imperative grounds of public security". If that is the only basis on which he can be deported, it is accepted that his appeal under the EEA Regulations 2016 should succeed.

18. If, however, the appellant is not entitled to the protection from deportation on that ground alone, the further issues arise whether his offending and behaviour establishes "serious grounds of public policy" and, if they do, whether it is established that his deportation is proportionate.

19. Mr Howells contends that his offending does establish "serious grounds" and that his deportation is proportionate.

20. Ms Dickinson, who represented the appellant, in addition to contending principally that the appellant could only be deported on "imperative grounds of public security", also contends that his offending does not reach the "serious grounds" threshold, in particular that his Polish offences in 2005 (even if both were established) do not establish a "present" threat and his UK offences likewise even in the light of the restraining order made following his conviction for the s.47 offence. In any event, she contends that his deportation would be disproportionate given the lack of ties he has with Poland and the impact that his deportation would have on his family in the UK and his two children in the UK.

21. In addition, reliance was placed upon Art 8 of the ECHR.

The Law

22. The relevant law, set out in the EEA Regulations 2016 and decisions of the Court of Justice of the European Union (CJEU), was not a matter of dispute between the parties.

23. The appellant is an EEA national and his deportation must, therefore, comply with EU law as set out in reg 27 of the EEA Regulations 2016. That provide, so far as relevant, as follows:

> "**Decisions taken on grounds of public policy, public security and public health**
>
> 27. (1) In this regulation, a 'relevant decision' means an EEA decision taken on the grounds of public policy, public security or public health.
>
> (2) A relevant decision may not be taken to serve economic ends.
>
> (3) A relevant decision may not be taken in respect of a person with a right of permanent residence under regulation 15 except on serious grounds of public policy and security.
>
> (4) A relevant decision may not be taken except on imperative grounds of public security in respect of an EEA national who –
>
> (a) has resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision; or
>
> (b) ….
>
> (5) The public policy and public security requirements of the United Kingdom include restricting rights otherwise conferred by these Regulations in order to protect the fundamental interests of society, and where a relevant decision is taken on grounds of public policy or public security it must also been taken in accordance with the following principles –
>
> (a) the decision must comply with the principle of proportionality;
>
> (b) the decision must be based exclusively yon the personal conduct of the person concerned.
>
> (c) the personal conduct of the person must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, taking into account past conduct of the person and that the threat does not need to imminent;
>
> (d) matters isolated from the particulars of the case or which relate to considerations and general prevention do not justify the decision;
>
> (e) a person's previous criminal convictions do not in themselves justify the decision;

(f) the decision may be taken on preventative grounds, even in the absence of a previous criminal conviction, provided the grounds are specific to the person.

(6) Before taking a relevant decision on the grounds of public policy and public security in relation to a person ('P') who is resident in the United Kingdom, the decision maker must take account of considerations such as the age, state of health, family and economic situation of P, P's length of residence in the United Kingdom, P's social and cultural integration into the United Kingdom and the extent of P's links with P's country of origin.

(7) ....

(8) A court or tribunal considering whether the requirements of this regulation are met must (in particular) have regard to the considerations contained in Schedule 1 (considerations of public policy, public security and the fundamental interests of society etc.)."

24. Regulation 27(8) cross refers to Schedule 1 to the EEA Regulations 2016 which sets out a number of considerations which, in particular, a court or Tribunal must "have regard to" in considering the issues of public policy, public security and the fundamental interests of society. Schedule 1 provides as follows:

"**Regulation 27**

CONSIDERATIONS OF PUBLIC POLICY, PUBLIC SECURITY AND THE FUNDAMENTAL INTERESTS OF SOCIETY ETC.

Considerations of public policy and public security

1. The EU Treaties do not impose a uniform scale of public policy or public security values: member of States enjoy considerable discretion, acting within the parameters set by the EU Treaties, applied where relevant by the EEA agreement, to define their own standards of public policy and public security, for purposes tailored to their individual contexts, from time to time.

Application of paragraph 1 to the United Kingdom

2. An EEA national or the family member of an EEA national having extensive familial and societal links with persons of the same nationality or language does not amount to integration in the United Kingdom; a significant degree of wider cultural and societal integration must be present before a person may be regarded as integrated in the United Kingdom.

3. Where an EEA national or the family member of an EEA national has received a custodial sentence, or is a persistent

offender, the longer the sentence or the more numerous the convictions, the greater the likelihood that the individual's continued present in the United Kingdom represents a genuine, present and sufficiently serious threat affecting of the fundamental interests of society.

4. Little weight is to be attached to the integration of an EEA national or the family member of an EEA national within the United Kingdom if the alleged integrating links were formed at or around the same time as –

   (a) the commission of a criminal offence;

   (b) an act otherwise affecting the fundamental interest of society;

   (c) the EEA national or family members of an EEA national was in custody.

5. The removal from the United Kingdom of an EEA national or the family member of an EEA national who is able to provide substantive evidence of not demonstrating a threat (for example, through demonstrating that the EEA national or the family member of an EEA national has successfully reformed or rehabilitated) is less likely to be proportionate.

6. It is consistent with the public policy and public security requirements in the United Kingdom that EEA decisions may be taken in order to refuse, terminate or withdraw any right otherwise conferred by these Regulations in the case of abuse of rights or fraud, including –

   (a) entering, attempting to enter or assisting another person to enter or to attempt to enter, a marriage, civil partnership or durable partnership of convenience; or

   (b) fraudulently obtaining or attempting to obtain, or assisting another to obtain or to attempt to obtain, a right to reside under these Regulations.

The fundamental interests of society

7. For the purposes of these Regulations, the fundamental interests of society in the United Kingdom include –

   (a) preventing unlawful immigration and abuse of the immigration laws, and maintaining the integrity and effectiveness of the immigration control system (including under these Regulations) and of the Common Travel Area;

   (b) maintaining public order;

   (c) preventing social harm;

   (d) preventing the evasion of taxes and duties;

   (e) protecting public services;

(f) excluding or removing an EEA national or family member of an EEA national with a conviction (including where the conduct of that person is likely to cause, or has in fact caused, public offence) and maintaining public confidence in the ability of the relevant authorities to take such action;

(g) tackling offences likely to cause harm to society where an immediate or direct victim may be difficult to identify but where there is wider societal harm (such as offences relating to the misuses of drugs or crime with a cross-border dimensions as mentioned in Article 83(1) of the Treaty on the Functioning of the European Union);

(h) combating the effects of persistent offending (particularly in relation to offences, which if taken in isolation, may otherwise be unlikely to meet the requirements of regulation 27);

(i) protecting the rights and freedoms of others, particularly from exploitation and trafficking;

(j) protecting the public;

(k) acting in the best interests of a child (including where doing so entails refusing a child admission to the United Kingdom, or otherwise taking an EEA decision against a child);

(l) countering terrorism and extremism and protection shared values."

25. It may be helpful briefly to summarise the correct approach. It is for the Secretary of State to establish the justification for the deportation of an EEA national (or relevant 'family member') under the EEA Regulations 2016. There is a hierarchy of protections against expulsion or deportation which "increases in proportion to the degree of integration of the Union citizen in the host Member State" (B v Land Baden-Wurttemberg; SSHD v Vomero (Cases C-316/16 and C-424/16) [2018] Imm AR 1145 at [48] ("B and Vomero")).

26. First, deportation of an EEA national or 'family member' will only be justified on grounds of "public policy, public security or public health" in general.

27. Secondly, however when an individual has a permanent right of residence there must be "serious grounds of public policy and public security" in order to justify any deportation.

28. Thirdly, in the case of an EEA national who has been continuously resident in the UK for at least ten years prior to the deportation decision (and that is the relevant date from which to count back), deportation can only be

justified on the most serious ground namely "imperative grounds of public security". In order to rely on this 'most serious ground' the individual must first establish that they have a permanent right of residence (see, B and Vomero at [49] and [61])

29. In establishing these grounds, the individual conduct must represent a "genuine, present and sufficiently serious threat affecting one of the fundamental interests of society". That, in general, requires that it be established that the individual has a propensity to reoffend in the future. However, in exceptionally serious cases, it may be that past conduct (which in general alone cannot establish a "present" threat) may suffice (see SSHD v Robinson (Jamaica) [2018] EWCA Civ 85 at [80] – [86] *per* Singh LJ). It was not suggested in this appeal that the appellant's offending was an "extreme case" where his past conduct alone might, even under the "serious grounds" basis for deportation, suffice.

30. Fourthly, in reaching any assessment, in particularly in relation to proportionality, all the relevant circumstances including the individual's age, state of health, family and economic situation, length of residence in the UK and social and cultural integration in the UK, rehabilitation prospects in both countries and any links with his or her own country, must be taken into account.

31. Fifthly, regard must be had to the considerations set out in Schedule 1 in the same way as in a non-EEA removal or deportation appeal the considerations in s.117B and s.117C respectively of the Nationality, Immigration and Asylum Act 2002 must be taken into account (on the latter see, Rhuppiah v SSHD [2018] UKSC 58 at [49]-[50]).

32. Sixthly, in determining whether an individual has resided in the UK for ten continuous years, regard should be had to any period of imprisonment prior to the decision to deport that individual (see B and Vomero). A period of imprisonment does not automatically break a period of residence such that it is no longer 'continuous' (B and Vomero at [71] and [80]). The issue is whether:

> "those periods of imprisonment have broken the integrative links previously forged with the host Member State with the result that the person concerned is no longer entitled to the enhanced protection provided for in [reg 27(4)(a)] – to carry out an overall assessment of the situation of that person at the precise time when the question of expulsion arises. In the context of that overall assessment, periods of imprisonment must be taken into consideration together with all the relevant factors in each individual case, including, as the case may be, the circumstances that the person concerned resided in the host Member State for the 10 years preceding his imprisonment…"

(see B and Vomero at [70]).

33. In relation to an EEA national who has satisfied the '10 years' continuous residence' requirement prior to the offending, the CJEU recognised in B and Vomero that it was particularly so that a period of imprisonment does

not automatically break "the integrative links that that person has previously forged" and so result in a discontinuity of residence (at [71]).

34. In relation to the issue of when a period of imprisonment would result in a break in the 'integrative links' with the host Member state, the CJEU in B and Vomero said this (at [72]- [75]):

> "[72]As part of the overall assessment, mentioned in paragraph 70 above, which, in this case, is for the referring court to carry out, it is necessary to take into account, as regards the integrative links forged by B with the host Member State during the period of residence before his detention, the fact that, the more those integrative links with that state are solid – including from a social, cultural and family perspective, to the point where, for example, the person concerned is genuinely rooted in the society of that State, as found by the referring court in the main proceedings – the lower the probability that a period of detention could have resulted in those links being broken and consequently, a discontinuity of the ten – year period of residence referred to in Article 28(3)(a) of the Directive 2004/38.
>
> [73] Other relevant factors in that overall assessment may include, as observed by the Advocate General in point 123 to 125 of his Opinion, first, the nature of the offence that resulted in the period of imprisonment in question and the circumstances in which that offence was committed, and, secondly, all the relevant factors as regards the behaviour of the person concerned during the period of imprisonment.
>
> [74] While the nature of the offence and the circumstances in which it was committed shed light on the extent to which the person concerned has, as the case may be, become disconnected from the society of the host Member State, the attitude of the person concerned during his detention may, in turn, reinforce that disconnection or, conversely, help to maintain or restore links previously forged with the host Member State with a view to his future social integration in that State.
>
> [75] On that last point, it should also be born in mind that, as the Court has already pointed out, the social rehabilitation of the Union Citizen in the State in which he has become genuinely integrated is not only in his interests but also that of the European Union in general (judgment of 23 November 2010, *Tsakouridis,* C-145/09, EU: C: 2010: 08, paragraph 50)."

35. The CJEU reiterated the central issue in determining whether the most serious protection in reg 27(4) applied was whether, as a result of the period of imprisonment, it had been shown that the "integrative links" with the host Member State had been broken (see [82] and [83]). The 'holistic' assessment was reiterated in [83] of the CJEU's judgment:

> "…the condition of having 'resided in the host Member State for the previous ten years' laid down in that provision may be satisfied where an overall assessment of the person's situation, taking into account all the relevant aspects, leads to the conclusion that, notwithstanding that detention, the integrative links between the person concerned and the

> host Member State have not been broken. Those aspects include, inter alia, the strength of the integrative links forged with the host Member State before the detention of the person concerned, the nature of the offence that resulted in the period of detention imposed, the circumstances in which that offence was committed and the conduct of the person concerned throughout the period of detention."

36. It is essentially the application of that approach definitively set out by the CJEU in B and Vomero which is the focus of the principal dispute between the parties as to whether the appellant's imprisonment between 1 September 2017 and 30 January 2018 – a period of five months) had the effect of breaking the continuity of the period of his residence so as to prevent him establishing, dating back from the deportation decision taken on 28 January 2018, a period of ten years' continuous residence.

37. Although I was not referred to it by the parties, reg 3 of the EEA Regulations 2016 deals with the issue of "continuity of residence". Regulation 3(3)(a) sets out the 'default' position that continuity of residence "is broken" when "a person serves a sentence of imprisonment". The effect reflects the CJEU's position that a period of imprisonment will break the continuity of residence for the purposes of established the required 5 years' residence in accordance with EU law in order to establish a permanent right of residence (see Onuekwere v SSHD (Case C-378/12) [2014] Imm AR 551). However, reg 3(4) goes on, in effect, to 'disapply' that provision when considering reg 24(4), and whether the 10 years' residence requirement is met, in certain circumstances:

> "(4) Paragraph (3)(a) applies, in principle, to an EEA national who has resided in the United Kingdom for at least ten years, but it does not apply where the Secretary of State considers that—
>
> (a) prior to serving a sentence of imprisonment, the EEA national had forged integrating links with the United Kingdom;
>
> (b) the effect of the sentence of imprisonment was not such as to break those integrating links; and
>
> (c) taking into account an overall assessment of the EEA national's situation, it would not be appropriate to apply paragraph (3)(a) to the assessment of that EEA national's continuity of residence."

38. Although not expressed in precisely the terms of the CJEU in B and Vomero, the effect is likely to be indistinguishable. The search remains, adopting a 'holistic assessment', whether the integrative links with the UK have been broken by the period of imprisonment.

39. With that legal approach in mind, I turn now to the facts of this appeal.

Discussion and Findings

40. On behalf of the appellant, Ms Dickinson relied upon a number of documents contained in the appellant's bundle filed with the Upper Tribunal on 7 September 2018. These include two witness statements from the appellant dated 22 March 2018 and 5 September 2018 (at pages 1 – 6 and 7 – 8 respectively); two statements from his sister, Katarzyna dated 22 March 2018 and 5 September 2018 (at pages 9 – 11 and 12 – 13 respectively); two statements from his brother, Tomasz dated 21 March 2018 and 5 September 2018 (at pages 14 – 15 and 16 – 17 respectively); two statements from his brother-in-law, Shaun dated 22 March 2018 and 5 September 2018 (at pages 18 – 21 and 22 – 23 respectively). In addition, Ms Dickinson relied upon a document from HM Prison Service, Portland (at page 30) attesting to the appellant's 'good behaviour' whilst in prison. Ms Dickinson also referred me to a brief supporting letter from the appellant's ex-partner, DK dated 8 February 2018 (at page 168) attesting to the appellant being a "good father" for his two children and stating that she would like to see the appellant and be part of the children's life in the future and that it would be beneficial for them and they would lose contact with him if he were deported to Poland. She also referred me to a number of photographs in the bundle.

41. Mr Howells indicated that, despite their presence at the hearing centre, he did not require that any of the appellant's family give evidence as he did not wish to ask them anything of significance. The appellant, however, gave oral evidence before me.

42. The only issue of contention concerned the appellant's conviction in 2005 in Poland. The Secretary of State's case is that, in addition to a conviction for obtaining property by deception, the appellant was also convicted of attempted robbery. The Secretary of State relied upon the PNC printout disclosing convictions for both offences on 15 November 2005 at the District Court in Gliwice in Poland. As regards the obtaining by deception, the printout states that the appellant received a sentence of imprisonment for one year and for the attempted robbery a period of imprisonment of two years and six months. The overall penalty was one of three years' imprisonment.

43. Mr Howells informed me that despite two requests on 20 October 2018 and 15 February 2009, the Polish authorities had not responded to requests from the Home Office for clarification concerning these convictions.

44. The appellant's evidence both in his witness statements and orally before me was that he had been imprisoned for two years and six months but only on an offence of obtaining by deception. That offence, he said, arose out of a non-payment of a loan which he received for purchasing a television. The appellant was adamant that he had never been charged with attempted robbery. It was his "mates" who had committed that offence and not him. The attempted robbery offence had been dropped against him. When asked in cross-examination whether it was normal to receive a sentence of two and a half years' imprisonment in Poland for

defence in relation to the television, the appellant answered "yes". He did not accept that the length of that sentence reflected a further offence. He accepted that he had no documents in relation to his conviction or in relation to the offences.

45. Because of the view I take below concerning the sole basis upon which the appellant may be deported, namely "imperative grounds of public security", it is not strictly necessary to resolve the factual dispute since Mr Howells accepts that the combination of the appellant's offending in Poland and in the UK cannot meet that high threshold. Nevertheless, I am satisfied that the appellant was convicted of the offence of attempted robbery in Poland.

46. I accept that it is for the Secretary of State to establish the convictions upon which he relies to deport the appellant. The detail given on the PNC printout is significant, in my judgment. The Secretary of State has done all that could be reasonably expected of him to obtain further elucidation from the Polish authorities concerning these offences which has simply not been forthcoming. The detail, however, in relation to two distinct offences is, in my judgment, only consistent with the appellant having been convicted of two offences. Despite his being adamant that he was not convicted of attempted robbery, if that were so it is curious in the extreme that the record should disclose a discrete penalty – wholly consistent with the period of imprisonment that he accepts was imposed – for an offence of attempted robbery. Mr Howells contended that, given the appellant's description of the offence of obtaining property by deception, the length of imprisonment was not consistent with that level of criminality. That would, in my judgment, certainly be the case if the appellant had been convicted in the Crown Court in England and Wales. There is, however, no evidence concerning the range of sentencing for such an offence in Poland. I do not, therefore, base my factual finding that the Secretary of State has established on a balance of probabilities that the appellant was convicted of attempted robbery on that matter. The level of sentence does, however, appear to be very severe indeed for an offence of obtaining a television by deception, the substance of which was that the appellant did not repay the loan he obtained in order to purchase it. That apart, the facts are not in dispute.

47. The appellant came to the UK in May 2006. As the judge found, based upon documentation before her, the appellant has worked in the UK from 21 August 2006 first at Johnsons Stalbridge Linen Services and latterly at Malcolm Barnecutt Bakery Ltd from that date until his imprisonment in September 2017. That, of course, is the basis upon which it is accepted that he has established a permanent right of residence.

48. During that time, he also established family life in the UK with DK and they had two sons now aged 7 and 12 years old respectively. DK is a Polish national herself. Their relationship, however, broke down sometime in 2016, perhaps around May of that year. It was following that breakdown

that the incident of domestic violence occurred followed by the actions which gave rise to the conviction for perverting the course of justice.

49. When their relationship broke down, the appellant left his employment with Johnsons Stalbridge Linen Services in Devon and moved to Cornwall where he started working for Malcolm Barnecutt Bakery Ltd. The appellant's evidence, which I accept, is that he has regained his employment with the bakery since his release from immigration detention in June 2018.

50. During his time in the UK, the appellant has only been back to Poland for two very brief periods in 2013 and 2014 to attend the marriage of his brother's daughter and his mother's funeral.

51. I accept on the basis of all the evidence that his family is now based in the UK. His evidence is, and I accept it supported as it is by his family members, that his sisters and their partners and children live in the UK. The evidence, which was not challenged, is that they are a close and interconnected family in the UK.

52. The whole focus of his life is centred on the UK.

53. Mr Howells submitted, on the basis of para 2 of Schedule 1 to the EEA Regulations 2016, that in order to be regarded as "integrated in the United Kingdom, an individual should have more than "extensive family and societal links with persons of the same nationality or language". He submitted that the appellant's links were with his Polish family in the UK. Whilst he undoubtedly does have those links, as I have already said, his links to the UK are much more. He has lived here for almost twelve years at the date of decision and, until his imprisonment on 1 September 2017, had worked continuously with two employers – a linen service and a bakery – in the UK. That is the basis for his accepted permanent right of residence which, in itself, provides some evidence of his integration in the UK. It is, as the CJEU recognises in its decisions, an important part of integration, and its recognition, that an individual based upon the exercise of Treaty rights over a five-year period is granted the right permanently to reside in a country other than their own within the EU. Whilst I "have regard" to the links which the appellant had within his own family (not all of which, by marriage, are Polish), I also have regard to the long period of residence – itself more than ten years – prior to his conviction and imprisonment on 1 September 2017. I am satisfied that the evidence establishes that he was by that date firmly integrated into the UK. His family is in the UK and his links with Poland were much less significant as evidenced by the fact that he only returned to Poland for two short visits in 2013 and 2014 in order to attend family events.

54. I bear in mind that the appellant has two children in the UK now aged 12 and 7 years old. They were born in the UK and have lived here all their lives. They will continue to do so.

55. In his evidence, the appellant accepted that he had not seen his children since his imprisonment on 1 September 2017. Mr Howells placed some reliance upon this. However, there is an explanation. The appellant's children live in Devon whilst he lives in Cornwall. As a result of his conviction, he is subject to a restraining order in relation to his ex-partner and, as I understand it, as a result of his release from immigration detention is subject to a curfew between 3 p.m. and 5 p.m. and between 9 p.m. and 11 p.m. The appellant works at night at the bakery. The present situation in respect of his contact with his children is not, in my judgment, representative of a lack of interest by the appellant in his two sons. He told me in his evidence that his two sons do not know about his offending as they do not need to know. That may be an understandable position to take even if not one which every parent would. I bear in mind the supporting letter from DK, his ex-partner even though that is dated over a year ago on 8 February 2018. The evidence from his family and contained in that letter is mutually supportive of his continued intention to be involved with his children, at least when possible.

56. The appellant's actual period of imprisonment was only five months after which he was detained in immigration detention. I take into account the only evidence concerning his behaviour in prison which was that he was a good prisoner. Mr Howells did not seek to argue otherwise in his submissions.

57. Whilst the appellant's offending in the UK was not insignificant, the offences were connected to a single incident of domestic violence and were not, in my judgment, of a nature which, in themselves, demonstrated that the appellant had disconnected from the fabric of UK society so as to break his integrative links with UK society. The period of imprisonment was short and, immediately following his release from immigration detention which followed in completing the requisite period of his term of imprisonment, the appellant returned to work in a UK company where he had worked prior to his imprisonment. As I have said, the whole focus of his life is in the UK.

58. In relation to the issue of rehabilitation, which was not explored extensively in argument before me, it is readily apparent that support from his family in the UK is important to that and he has no close family in Poland. The prospects for rehabilitation are, therefore, enhanced in the UK and may be reduced if he returns to Poland.

59. In my judgment, the appellant was firmly integrated in society prior to his imprisonment and that period of imprisonment did not break his integrative links with society so as to create a 'discontinuity' in the period of his residence prior to the Secretary of State's decision on 28 January 2018. The appellant is, therefore, entitled to rely upon reg 27(4)(a) namely that as a result of a continuous period of ten years' residence prior to the decision to deport him he may only be deported on "imperative grounds of public security". As Mr Howells accepted, the Secretary of

State cannot establish that and consequently the appellant's appeal must succeed under the EEA Regulations 2016.

60. In the light of that finding, it is not strictly necessary for me to make any findings or reach any decision on the issue of whether the Secretary of State could establish the "serious grounds" basis for deporting the appellant. However, I will briefly give my reasons for concluding that the Secretary of State could not succeed even in establishing that basis for deporting the appellant.

61. First, whilst I accept that the appellant was convicted of attempted robbery in Poland in 2005, that conviction is now over thirteen years ago. The appellant has shown no inclination or propensity to repeat that level of offending since that time. No material was drawn to my attention that could conceivably justify a finding that the appellant has a propensity or that there is any risk of him committing a serious offence such as attempted robbery in the future.

62. However, there is the issue of the appellant's offending in the UK. That is, of course, much more recent. That offending, including the perverting the course of justice offence, was committed in the context of a domestic dispute between the appellant and his ex-partner. Certainly, when the appellant was sentenced for that offence the oral report of the probation officer, which the sentencing judge accepted, was that the appellant was "not really prepared to accept the full extent of his offending and, over and above that, to accept how he had been behaving to his ex-partner". That clearly raises the potential for the appellant, at least when presented with a similar challenging situation in a personal relationship, to further offend in this way. There is evidence that the appellant has sought to address his behaviour through the Probation Service (see letter dated 23 July 2018 at page 203) but, at that time, although willing to do so had not yet attended a 'Respectful Relationships' course. The appellant told me in his oral evidence that he had completed that course two weeks ago but he had no documentation to support that. Even if I accept that the appellant has completed such a course, and I see no reason why I should not, there is no supporting evidence from the Probation Service as to the appellant's response during the course which counters the view given by the probation officer when the appellant was sentenced. On the basis of this evidence, therefore, I accept that there remains a risk, albeit a low one, that the appellant may reoffend in a domestic context if a challenging situation were to occur such has led to his conviction.

63. Secondly, however, despite the significance of the appellant's offending (and if he were to reoffend his offending in the future is in the context of his personal relationships), the Secretary of State must establish that there are "serious grounds" of public policy. Whilst the appellant's future risk of offending would, undoubtedly, reach the lowest level envisaged by the EEA Regulations 2016 (namely grounds of public policy), I am not satisfied that the offending reaches the heightened standard of "serious grounds".

64. The fact that the appellant is subject to a restraining order, in my judgment, reflect no more (and no less) than a future risk to his ex-partner and is, therefore, relevant (and I take it into account) in finding that the appellant continues to present a risk to others in his personal relationships, albeit a low risk.

65. Consequently, while I acknowledge the significance and abhorrence of a risk (albeit low risk) of violence in his future personal relationships, and although I accept that the appellant does represent a "genuine, present and sufficiently serious threat affecting" a fundamental interest of society, that risk does not amount to "serious grounds" of public policy which, as the Secretary of State's own guidance makes plain, requires "stronger grounds than would be applicable for a person who does not have a permanent right of residence" (see, 'EEA decisions on grounds of public policy and public security' (14 December 2017) at page 13 of 43).

66. Thirdly, on the basis of the evidence before me I find that the appellant's integration in the UK has concomitantly resulted in him retaining few if any links with Poland. His family is, for practical purposes, in the UK. It may well be, therefore, that his rehabilitation would be adversely affected by his return to Poland.

67. Finally, both representatives made submissions in relation to the proportionality of the appellant's deportation under the EEA Regulations 2016. It would be one further step in making unnecessary findings to the outcome of this appeal to reach any concluded view on whether his deportation would be disproportionate. A conclusion on this issue can only be reached if a counter-factual position is taken on issue of "serious grounds". Suffice it to say that the factors weighing in the appellant's favour, when balanced against the counter-factual "serious grounds" being established, do not given he is an adult in good health with (in my view) the ability to readjust to life in Poland despite living in the UK since 2006, carry any convincing weight. The impact upon his children, even if he were to be able to re-establish contact with them, would be no more than would be expected by the deportation of an individual. Whilst their best interest would, no doubt, be furthered by continued contact with the appellant, there is no compelling evidence of significant impact upon them beyond what inevitably follows when a non-residential parent is deported. Having regard to all the circumstances, if "serious grounds" had been established by the Secretary of State (which they are not), the contention that his deportation would be proportionate would, in my judgment, carry considerable force and likely succeed.

Decision

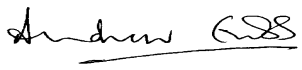
68. The decision of the First-tier Tribunal to allow the appellant's appeal was set aside by the decision of UTJ Rintoul dated 3 July 2018.

69. I remake the decision allowing the appellant's appeal under the Immigration (EEA) Regulations 2016 on the basis that it has not been

established that his deportation is justified on "imperative grounds of public security".

70. In the light of this, it is unnecessary to reach a decision on Art 8 of the ECHR.

Signed



A Grubb
Judge of the Upper Tribunal

5 March 2019