Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00410/2016

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
On 4 April 2019	**On 24 June 2019**
And 24 May 2019	

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MR M M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Caskie, instructed by Rea Solicitors
For the Respondent: Ms O'Brien, Senior Home Office Presenting Officer (04/04/19)
Mr Mullen, Senior Home Office Presenting Officer (24/05/19)

DECISION AND REASONS

1. The appellant is a citizen of Poland born on 20 June 1982. He appeals against the decision of the respondent to deport him.

2. The appellant entered the United Kingdom in October 2008 and was employed. There was a gap in employment between 2010 to 2012 but as the appellant was in that period married to his wife, who it is accepted was working during this period,

he was resident pursuant to the Immigration (European Economic Area) Regulations 2006. He therefore acquired the right of permanent residence in October 2015.

3. The Secretary of State's case is, subject to the acceptance that the appellant had acquired permanent residence before his previous imprisonment in the United Kingdom, is that he presents, on account of his conviction and sentencing to twenty months' imprisonment for being concerned in the supplying of a class A drug and his convictions in Poland on 27 February 2006 and 28 September 2009 on two counts of theft, two counts of burglary and robbery, a high risk of harm to the public and that the criminal justice social work report indicated that he posed a high risk of reoffending given his previous behaviour and drug addiction. It was noted that also that the statements he had made to the social worker were untrue, both in respect of his claimed earnings (he claimed to earn approximately £700 a week as a welder) and that he had no previous experience of custody, which was untrue, given that he had been sentenced to five periods of imprisonment in Poland.

4. The respondent considered that the appellant had a propensity to reoffend and that he represents a genuine, present and sufficiently serious threat to the public to justify his deportation on the grounds of public policy and that, even if he had gained a permanent right of residence, the nature of his offending and the risk he posed to the public would meet the serious grounds test. It is considered also that any rehabilitation work could be continued in Poland.

5. In addition, the respondent considered that the appellant's removal would be proportionate having had regard to Article 8 Human Rights Convention, the appellant failing to show that paragraph 399A would be applied.

6. The respondent also certified the appeal pursuant to Regulation 24AA of the 2006 Regulations although the appellant was not in fact removed. The respondent also certified the appeal pursuant to Section 94B of the Nationality, Immigration and Asylum Act 2002.

7. The appeal against this decision first came before the First-tier Tribunal on 18 October 2016 when First-tier Tribunal Judge David Clapham allowed the appeal, concluding that, in the light of the High Court of Justiciary's decision that his deportation to Poland in light of his Polish convictions would be oppressive, that it would be disproportionate to deport him.

8. The matter then came before the Upper Tribunal sitting in Glasgow on 3 August 2017. In a decision promulgated on 15 August 2017 the Upper Tribunal set aside the decision of the First-tier Tribunal directing that none of its findings were to stand and that it should be remitted to the First-tier Tribunal to be reheard. The appeal then came before the First-tier Tribunal on 26 January 2018 at which hearing the Secretary of State was not represented and in respect of which he had sought an adjournment. Although Mr Caskie, who appeared for the appellant below, did not object to the adjournment, the judge nonetheless proceeded to determine the appeal. The judge noted [18] that the burden of proving that a person represents a genuine, present and

sufficiently serious threat affecting one of the fundamental interests of society rests on the Secretary of State. The judge concluded also that the appellant had acquired the right of permanent residence.

9. The judge viewed the appellant's claim that he was now reformed and drug free with some scepticism [34] but "I have no reason to believe that if he were not deported he would act as a lawful citizen. Rather, I believe there is a real risk criminality will surface again". This was a conclusion reached on the basis of the previous criminal behaviour and acknowledging that there was no evidence of further criminality since release although that was a relatively short period. The judge concluded also at [38] that there may be situations in which if the appellant's good fortune turned against him, he would again engage in criminality although acknowledging that whilst in custody he had attended courses aimed at addressing reoffending which may have been of some assistance but the judge then directed himself [31] that the issue of was whether the respondent has demonstrated his presence (sic) is justified on serious grounds of public policy. The judge found that the appellant's criminality has been significant [32] and that offences have consequences for individuals, being harmful to the wellbeing of the public.

10. The judge then went on to consider the issues of rehabilitation, directing himself towards **Boultif** and **Maslov** at [33] and [42], concluding:-

> "It is my conclusion the appellant's deportation is required in the interests of the public and does not breach any of his protected rights".

11. The respondent sought permission to appeal against the decision on the grounds that the judge had:-

    (i) adopted an incorrect standard of proof with respect to what the Secretary of State needed to prove, in finding that there is a real risk if criminality will surface again (paragraph [35]);

    (ii) failed properly to address whether the appellant represents a present risk to the one of the fundamental interests of society as was required, failing to find a "present risk";

    (iii) failed properly to address the issue of the chance of rehabilitation, leaving out in particular the long passage of time since the appellant's offending in terms of burglary and robbery in Poland;

    (iv) improperly speculated as to whether there was a risk of the appellant taking drugs again;

    (v) improperly dealt with proportionality as though it was an Article 8 case and failed properly to take into account, following Straszewski v SSHD [2016] EWCA 1512 and failed to notice the difference between the EEA national and another person who may be deported.

12. I heard brief submissions from both parties. I asked them initially to address me on the apparent error at paragraph [44] identified above.

13. Paragraph [44] discloses a clear error on two grounds. First, that the decision is in the public interest is contrary to the express wording of Regulation 21(5)(b) and to the case law concerning deportation of EEA nationals. Second, the reference to "protected rights" has all the hallmarks for a decision pursuant to Article 8 of the Human Rights Convention rather than an assessment of proportionality under the EEA Regulations.

14. Whilst the finding that the appellant is entitled to a permanent right of residence is clearly reasoned, the rest of the decision insofar as it reaches conclusions about the appellant cannot be sustained. Overall, as the grounds aver, there has been no proper engagement with the correct test in this case, which is whether there are serious reasons to justify deportation.

15. It is to be noted from SSHD v Straszewski [2015] EWCA Civ 1245 that Moor-Bick LJ observed at [13]:

> "13. Given the fundamental difference between the position of an alien and that of an EEA national, one would expect that interference with the permanent right of residence would be subject to more stringent restrictions than those which govern the deportation of nationals of other states. Moreover, since the right of free movement is regarded as a fundamental aspect of the European Union, it is not surprising that the Court of Justice of the European Union ("CJEU") has held that exceptions to that right based on public policy are to be construed restrictively: see, for example *Van Duyn v Home Office (Case C-41/71) [1975] Ch 358* and *Bonsignore v Oberstadirektor der Stadt Koln (Case C-67/74) [1975] ECR 297* ."

16. Commenting on that, the Inner House of the Court of Session in Goralczyk [2018] CSIH 60 at [22]:

> "22. Moore-Bick LJ's expectation that there should be stringent restrictions on a Member State's ability to remove an EEA national, including a "foreign criminal", who has acquired the right to reside in the United Kingdom is borne out by the terms of the 2006 Regulations. In particular, a decision to deport an EEA national with a permanent right of residence may not be taken except on serious grounds of public policy or public security: regulation 21(3) . Regard has to be had to the word "serious", a point made by Mr Caskie when explaining the effect of the 2006 Regulations as being to establish three levels of rights and consequent degrees of protection against removal. A decision to remove a person who has resided in the United Kingdom for less than five years may be taken "on grounds of public policy" but a decision to remove a person who has resided in the United Kingdom for more than five years cannot be taken "except on serious grounds of public policy". It follows that "serious grounds" of public policy must mean something different from "grounds" of public policy, and it follows from that that the decision-maker must identify just what the relevant grounds are and then evaluate them as to their seriousness. Moreover, a relevant decision must be taken in accordance with the principles set out in regulation 21(5) . Finally, in terms of regulation 21(6) , before taking such a decision the decision-maker must take into account considerations such as the age, state of health, family and economic situation of the person, his length of residence in the United Kingdom and the extent of his links with his country of origin."

17. Whilst the judge reflects at [32] on the appellant's past history, what he does not do is identify why there are grounds for believing that the appellant's personal conduct will present a genuine, present and sufficiently serious threat. There are no proper findings as to whether the appellant is in fact drug free or how long it has been since he has refrained from drugs given the evidence of his attending at workshops and a negative urine test. Insofar as there are findings at [35], these are couched in terms of real risk rather than a finding of a present and sufficiently serious threat to a public interest.

18. For all of these reasons, I am satisfied that the decision of the First-tier Tribunal involved the making of an error of law and I set it aside. The hearing was adjourned to allow for any further evidence to be adduced.

Remaking the decision

19. I heard evidence from the appellant and his wife. The appellant adopted his witness statement adding that he had stopped taking cocaine and is currently taking antidepressants for his depression. He said he was aware that if he reoffended that the whole process would start again and that his wife had said that she would leave him.

20. In response in cross-examination, the appellant accepted that he had served time in prison in Poland but did not recall that when he spoke to a criminal justice social worker on 4 December 2015 that he had no experience of custody. He said it was a long time ago and he confirmed that he had actually spent time in prison in Poland. The appellant appeared to have some difficulty in understanding the questions put to him but was happy to proceed without the assistance of an interpreter. His representative made objection.

21. The appellant said that he had been to Narcotics Anonymous and they were helping him. He had been going for three years. He had not had any rehabilitation treatment in prison because he was taken to a detention centre.

22. It was put to him that the extradition treaty proceedings were quite traumatic for him. He accepted that, but it was put to him that nonetheless three years later he was in court for serious charges of supplying class A drugs, to which he said he that he had made a mistake. He said that something had happened to his life and that he was not really the same person at the time. He said he had not taken any legal advice about his situation in Poland.

23. In re-examination the appellant said he need not remember whether the Criminal Justice social worker had asked him if he had been prison in Scotland or what he would have said if that had been the question. He said he had not been offended or been arrested since release in October 2016. He said that he feels better now as he does not drink and does not take drugs.

24. I then heard evidence from the appellant's wife, who adopted her witness statements. She confirmed that she would leave the appellant if he does take drugs

again and that he was aware of that. She said she did not think he would commit a crime again.

25. In cross-examination Mrs Maziarska said that she knew the appellant would be in trouble with the law in Poland and committed quite a few serious offences. She said that she believed that he had changed now and she could see it every day. She had not known how long he had been taking drugs prior to 2015.

26. Mrs Maziarksa said she would stay in Poland because she had lived here for twelve years, she was self-employed running her own cleaning business with two employees. She said that the appellant had not worked since he left prison, he is not feeling well and cannot work properly.

27. In re-examination Mrs Maziarksa said that when the appellant was released he was told in the police station that he could not work.

28. In submissions Mr Mullen relied on the decision, accepting that the appellant has permanent residence. He said it was not clear what the position was regarding the convictions in Poland and that the appellant might have to serve a sentence if deported. He submitted that the appellant's responses to the Criminal Justice Social Worker's questions appeared not to be full and appropriate, and that thus the reliability of her assessment of the risk of reoffending or harm was not relaible.

29. Mr Mullen submitted that the appellants answers to the social worker cast doubt on the appellant's reliability as he was sentenced to twenty months' imprisonment for supplying a class A drug. He submitted that there was no independent evidence that the appellant was clean from drugs and that there was a pattern of serious offending, limited integration into the United Kingdom and the previous deportation decision had not prevented him from wrongdoing in the past.

30. Mr Mullen submitted that the appellant was exaggerating the difficulties in understanding the questions and was perhaps affecting not understand things properly. He did, however, he accepted that he had not put to this to him.

31. Mr Mullen submitted that the appellant is in fact closer to a career criminal rather than someone who was offending due to problems whilst a juvenile. He submitted there was no independent evidence as to risk and that his release in 2016 was relatively recent.

32. Mr Caskie submitted that the burden of proof was on the Secretary of State and there was nothing to indicate the appellant would not face imprisonment on return to Poland. He submitted that the appellant had every incentive not to return to Poland and tried to kill himself in the past but he submitted it was difficult for the Secretary of State to prove that the appellant had given false information to the social worker and that twenty months for the offence in question was at the low end.

The Law

33. It is to be noted also that by operation of the Immigration (European Economic Area) (amendment) Regulations 2017 in the schedule at 4 that notwithstanding the revocation of the 2006 Regulations, these continue to apply in respect of this appeal as it was pending on 31 January 2017.

34. It is not suggested that there is any material difference between Regulations 19(3)(a) to (c) of the 2006 Regulations and Regulation 23(6)(a) to (c) of the 2016 Regulations. Nor was it submitted that Regulation 27 of the 2016 Regulations is materially different from Regulation 21 of the 2006 Regulations. The principle difference is Regulation 27(8) of the 2016 Regulations which requires me to have regard to the considerations contained in Schedule 1 of the 2016 Regulations.

35. In reaching my conclusion I have had full regard to Schedule 1 of the 2016 Regulations. The Secretary of State has not introduced any specific evidence to show that the offences committed here caused public offence nor did he submit that the public maintenance of public confidence in taking action was undermined in this case. Thus, I accept that there has been persistent offending in the Poland in the past, for the reasons set out below I consider that this is no longer likely to occur and that there is, given the findings I make below with regard to propensity to offend, that the public is adequately protected.

36. It is of note that in 2010 the Appellate Authorities sought to extradite the appellant to Poland to serve sentences in respect of his convictions in Poland. That request was, however, refused by the High Court of Justiciary Appeal Court, reported as [M] and the Lord Advocate. In short, the extradition was not ordered, was refused on the grounds that the appellant's medical condition was such that it would be oppressive to extradite him. It is worth noting the following from that decision:

> "[4] It is necessary to review the appellant's mental condition, in so far as possible on the evidence available, from the time of his youth. He was born in Chelmo, Poland in June 1982. He had a very disturbed and difficult childhood, including being assaulted frequently by his father. He had difficulties in primary school and was placed in residential school for certain periods. He received some psychiatric treatment in childhood, including hospitalisation for about three months at some time between the ages of 12 and 16 years. The precise nature of his then disorder is unclear.
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> [5] In adulthood in Poland he committed a number of crimes. He served a custodial sentence of some fourteen months. In September 2003, while acting with others, he misappropriated property. A penalty of one year's imprisonment, conditionally suspended for four years, was imposed. In November 2005 he stole a quantity of metal. A penalty of one year's imprisonment, suspended for five years, was imposed. Earlier, in October 2000, while acting with others, he had broken into a motor vehicle causing certain damage and driven it away; in November 2000, while acting with another, he had broken into premises and misappropriated metal. For these two offences he was sentence to a cumulo custodial term of one year and two months. This penalty was initially suspended for a period of three years but in July 2006 the Polish court ordered that that penalty be carried out. These four convictions, with their associated penalties, are the basis for the extradition request.

> [6] The appellant's wife, who is also Polish, came to Scotland in about 2006. She settled in Aberdeen. The appellant followed her there in 2007. He obtained work, initially in his trade as a welder, and latterly as a butcher. Apart from a conviction for driving without insurance he has no criminal record in this country.
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> [15] All four psychiatrists gave evidence before the court. Although there remained differences of view as to the precise diagnosis of the appellant's condition, in the end that difference was not significant. The essential medical issue was, in light of the appellant's whole history, what prospectively was his likely mental condition in the event of his appeal being refused and his being extradited to Poland. The degree of risk of his making a further attempt on his own life might be a matter of interest to the court but, according to the expert evidence, it was not a risk which could readily be quantified by psychiatrists. It was very difficult to predict what a particular individual might do in that regard. It was, from a psychiatrist's point of view, more important to manage such risk as existed, including estimating when the appellant would be at greatest risk of self-harm. However, as narrated above, Dr Lenihan had opined that there would be a high risk, until the appellant adjusted to the new situation, which was estimated as lasting from some weeks to up to two months. There was no serious challenge to that estimate. The high risk period would start from the point when the appellant was first informed that his appeal had failed - should that be the court's decision - and extend through his remaining time in prison in Scotland (he would be extradited within ten days), through his transfer to Poland into his time in Polish custody.
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> [29] In the present case the offences of which the appellant stands convicted in Poland are at first sight not of the most serious. They are crimes of dishonesty in respect of which the Polish court imposed sequential custodial sentences of one year and two months, one year and one year respectively, in each case conditionally suspended for a number of years. In respect of at least one of these sentences (that for one year and two months) a Polish court has ruled that the penalty has to be carried out. The European Arrest Warrant, however, refers to all three judgments as enforceable and the sheriff proceeded on the basis that a cumulo sentence of three years and two months was to be served. There was no suggestion before us that that basis was incorrect. The appellant has been in custody in Scotland since 10 March 2011 - that is, eleven months or so. We were informed that that period would be discounted by the Polish authorities from the appellant's outstanding sentences but that, under Polish law, there is no remission of sentence, automatic or discretionary. "

37. In assessing the appellant's evidence, I bear in mind that he was giving evidence in English rather than in Polish, his native language. I accept that he did have some difficulty in understanding the questions put to him but I do not accept that this was because he was seeking to be evasive. The difficulties arose when the questions were complex, containing several phrases, and I bear in mind that the appellant does have

some mental health difficulties as was noted by the High Court of Justiciary in the past and by the fact that he is currently prescribed antidepressants.

38. The core question is the nature of the threat, if any, that the appellant poses.

39. In analysing that issue I have paid attention to the decision of the High Court of Justiciary as well as the report by the residential officer at HMP Grampian, an alcohol and drugs action letter, NHS Grampian Health Centre letter from a substance and misuse nurse and a sentencing report prepared by a criminal justice social worker as well as the appellant and his wife's evidence.

40. The first issue in considering the sentencing report is whether, as the respondent alleges, the appellant supplied false information. There are two elements to this: the exaggeration of income to minimise the extent of which he was deriving financial benefit from drug dealing; and, the lack of previous convictions highlighting a pattern of offending behaviour relating to this offence (Section 5(b)).

41. The appellant was not questioned on the issue of his income on this occasion and the findings with respect that in the previous decision are not preserved. Nonetheless, they were clearly raised in the refusal letter and it is necessary for me to reach conclusion about them. There is nothing in either witness statement which is of assistance but the appellant said this:

> "I was convicted of a second drugs offence 6 November 2015. I had twenty grams of cocaine in my flat which was for my personal use. The grinders that were found were used for grinding up cannabis because I smoke cannabis as well. Before my custodial sentence, I had a serious drugs problem, I needed a combination of cocaine, coffee and cigarettes to get me ready in the morning before I went to work. I used to smoke cannabis in the evening to relax. I do not take drugs anymore and I have never really been a drinker. It has been over three years since I have taken cocaine or any other illicit drugs."

42. There is, however, little evidence regarding the nature of the offending although it is clear that the appellant had scales, a wooden grinder and other paraphernalia connected with the supply of illicit drugs.

43. Viewing the evidence on this issue as a whole, I considered that the appellant did seek to minimise his involvement with drugs, seeking to show that what he had was for his own use. That said, there was no indication that he was a big scale dealer.

44. The issue about the appellant not being in custody before is somewhat unclear. The first mention of prior offending is at Section 5(b) where it is said the author refers to the Scottish criminal records office list which discloses driving offences. There is no indication from this that the author had before her any evidence of the appellant's offending in Poland although it seems unlikely that this information was unavailable generally in the circumstances of the appeal in 2012. It is also notable from that that the appellant had of course been held on remand in Scotland for a period of eleven months. It was while on remand that he tried to kill himself by hanging twice. In

that context, the recording that "Mr [M] has no previous experience of custody. He states that he does not know how he would cope with a custodial sentence stating that he feels he would be 'broken down' by this." makes little sense.

45. Given that it was the centrality of the threats his mental ill-health, which permitted him to avoid extradition to Poland, it is strange that he did not mention this if asked about it, not least as it was a matter of public record. There would in any event have been little purpose in the appellant, if he wanted to avoid a custodial sentence, in not making reference to what had occurred in the past. He had been on remand, but had not been sentenced.

46. Drawing these strands together, it is difficult in the absence of a contemporaneous record of what questions were put in the interview with the social worker, to draw conclusions as to whether the appellant sought to mislead or not. Given the format and structure of the form, it is easy to see why the appellant may not have been asked about convictions outside the UK, and may not have mentioned being on remand. There would have been no advantage to him in suppressing evidence about in prison on remand before, or to having had mental health problems in the past.

47. It is evident from the report that the author considered that the author considered that the appellant's use of cocaine in the past may have undermined the appellant's thinking processes. That is a relevant given issue given his evidence that he no longer abuses drugs. There is some independent evidence to confirm that. There is a letter dated 8 September 2016 indicating that he attends all the arranged one to one meetings with the allocated drugs worker and evidence of a negative urine test. These are, however, of some vintage. There is no up-to-date evidence from such sources to confirm that the appellant is no longer using drugs or that he has continued to attend Narcotics Anonymous.

48. There is, equally, some indication that he has learnt his lesson and thus there is less of a risk of reoffending. There is no record of any convictions since his release nearly three years ago and there is a report from the residential officer at HMP Grampian stating that he has been a well-behaved and polite prisoner and opining that he has learned the errors of his way whilst in custody and appears to have undergone some significant rehabilitation and will pose a minimal risk to society when released.

49. The criminal justice social worker report predates that letter and at Section 7 conducts a risk assessment. Despite the misgivings set out above, there does not appear to me to be any error in relying on the identification of risk factors include minimising the seriousness of offence and lack of consequential thinking. Such phrases are common in all such reports as indeed are the identification of protective factors: refraining from a use of cocaine since committing the offence, supportive relationship (which still exists) and a willingness to engage with the drug and alcohol team. It was also of note that "Mr [M] does not meet the criteria for a risk of serious harm, there is no evidence to suggest a period of post release supervision should the court impose a custodial sentence".

50. There is little merit in the Secretary of State's observation that the sentencing judge did not agree with the assessment the appellant did not pose a high risk of serious harm to the public. Serious harm is clearly defined as the social worker did in her report. and the sentencing judge is simply in a position of twenty months' imprisonment. That appears in order with the sentencing guidelines. He makes no observations about serious harm.

51. Similarly, it is difficult to see how the convictions for theft, burglary and robbery, some of which at least involve violence, which took place over ten years ago, are indicative of a high risk of harm to the public now. There was no indication that the appellant has indulged in such behaviour since moving to the United Kingdom or has used unlawful violence.

52. The refusal letter notes that the social worker found the appellant posed a high risk of reoffending. That phase is not put in quotation marks and does not appear in the social work report which appears at paragraph C and that would appear to sit ill with the observation that he is suitable for community disposal and that there are no identified issued in relation to public protection.

53. It is odd, however, that in the context of the appellant's history, there is no mention of self-harm in the social justice social work report. As he said he does not identify any physical or mental health issues and does not identify any risk of self-harm.

54. In the circumstances, it is difficult to attach much weight to the criminal justice social work report. The conclusions appear to have been reached in the absence of full knowledge of the appellant's criminal offending behaviour, albeit that those were not linked to drug use. Further, no account had been taken of previous serious mental health problems or prior remand for eleven months whilst expedition proceedings were in progress.

55. I have no doubt that seeking to prevent drug dealing because of all the problems this causes in society is clearly a serious reason for public policy. But I am not satisfied in this case that the appellant currently represents a genuine, serious or sufficiently serious threat to the public.

56. There is no evidence of reoffending or of continued drug taking which would be a strong indicator of future offending. Whilst there is evidence of relatively serious violent behaviour in the past, there is nothing recent and what evidence there is from anybody in the justice system as to the risk of further offending is the observation from a prison officer who has supervision of the appellant on his wing, that he appears to have made significant steps towards to rehabilitating himself.

57. I have no reason to doubt his wife's sincerity in saying that she would leave him were he to start taking or dealing in drugs again and there is some evidence, albeit of some vintage, that he had complied with not taking drugs. I can attach some weight to the observation that if he stays away from taking drugs he is unlikely to be involved in the dealing of it and overall I find that I am not satisfied that this

appellant presents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, taking into account his past conduct.

58. Further, I am satisfied that the appellant has a relationship with his wife. I conclude that there would be significant interference with these rights were he to be deported to Poland.

59. I note that the appellant has not reoffended since his release.

60. Taking all of these factors into account I am satisfied that removal would be disproportionate.

61. Accordingly, for these reasons, I conclude that the Secretary of State has not shown the decision made to deport in this case was not in accordance with the United Kingdom's obligations pursuant to the EU Treaties and I allow the appeal on that basis.

Summary of Conclusions

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

2. I remake the appeal by allowing the appeal on EU grounds.

Signed Date 17 June 2019.

Upper Tribunal Judge Rintoul