Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: DA/00495/2017**

THE IMMIGRATION ACTS

Heard at RCJ
On 25 March 2019

Decision & Reasons Promulgated
On 12 April 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

LUKASZ TADEUSZ BOGUSZEWSKI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Mohzam, solicitor of Burton & Burton Solicitors
For the Respondent: Mr I Jarvis, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Poland, date of birth 28 March 1986, appealed against the Respondent's decision, dated 18 August 2017, for deportation made under the Immigration (European Economic Area) Regulations 2016 (the 2016 Regulations).

2. His appeal came before First-tier Tribunal Judge Clemes on 9 November 2017 and in a decision [D] promulgated on 28 November 2017 the Judge dismissed his appeal.

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3. Permission to appeal that decision was given by Upper Tribunal Judge Grubb on 14 May 2018.

4. The Judge in granting permission said:-

> "It is arguable that the judge erred in law in considering the basis upon which the Appellant could be legally deported under EU law. It appears that the judge accepted that the Appellant had been in the UK since 2006, although only exercising Treaty rights since 2008 (see paras 25 and 26). In which case, it would appear that the Appellant had been in the UK for at least 10 years prior to the decision to deport and could only be deported on imperative grounds of security (reg 27(4)(a)). The judge only considered the legality of his deportation on the 'lesser' basis of 'serious grounds of public policy' based upon a permanent right of residence. …".

5. The argument advanced by Mr Mohzam was that the Appellant had entered the United Kingdom lawfully in 2006. Mr Mohzam did not dispute the finding as the Appellant was not, until early 2008, exercising treaty rights as a qualified person under Regulation 6. Whilst the Appellant had in the succeeding years of 2007, 2009, 2010, 2011, 2012, 2013 been convicted of a number of offences, and in 2016 for the index offence of possessing controlled drugs and producing a controlled drug : For which he was sentenced to fourteen months' imprisonment in total, which led to the deportation notice served by the Respondent on 15 May 2017, that the grounds did not reflect the fact that the Appellant had by that stage been in the UK as a fact, according to his argument, for over ten years. He further argued that the Judge had not properly addressed the Article 8 ECHR based claim; in that the proportionality assessment had failed to take into account the length of time the Appellant had spent in the United Kingdom.

6. At the hearing of the appeal the Appellant, who had been hoping to attend for the purposes of his appeal having now returned to Poland, was not produced, but it did not feature as an issue that was argued before me as to some bases upon which the

appeal should be adjourned. The e-mail and information relating to the non-attendance of the Appellant was shown to Mr Mohzam before the hearing.

7. Mr Jarvis countered the arguments:- first, If you calculated the time the Appellant had been exercising treaty rights in the UK he had not, as a fact on the evidence, i.e. from early 2008 [D23-25] and the deportation decision, 18 August 2017, he was imprisoned on 3 May 2017, did not demonstrate the ten years' residence, and in the sense of exercising treaty rights. Secondly, more than that, the Appellant's criminal history showed that he had not been lawfully in the UK other than simply as a fact through being able to reside here under the provisions of the EEA directive as represented in the Regulations. Mr Jarvis argued that even if that argument failed the fact was that the Appellant had been imprisoned, had been involved in criminality, and that in the light of the case law the ten year period had not been established.

8. Third, Mr Jarvis relied upon the case of Vomero, a decision of the Grand Chamber of the Court of Justice of the European Communities on 17 April 2018. The decision of the court addressing, amongst other things, the implications on the cumulation of ten years' residence and the implications of interruptions in that period, said [paragraph 70]:-

> "As to whether periods of imprisonment may, by themselves and irrespective of periods of absence from the host Member State, also lead, where appropriate, to a severing of the link with that State and to the discontinuity of the period of residence in that State, the Court has held that although, in principle, such periods of imprisonment interrupt the continuity of the period of residence, for the purpose of Article 28(3)(a) of Directive 2004/38, it is nevertheless necessary — in order to determine 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 that provision — 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 circumstance that the person concerned resided in the host Member State for the 10 years preceding his imprisonment …".

At [71] the court said:-

"Indeed, particularly in the case of a Union citizen who was already in a position to satisfy the condition of 10 years' continuous residence in the host Member State in the past, even before he committed a criminal act that resulted in his detention, the fact that the person concerned was placed in custody by the authorities of that State cannot be regarded as automatically breaking the integrative links that that person had previously forged with that State …"

and at [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 10-year period of residence referred to in Article 28(3)(a) of Directive 2004/38."

9. Other relevant factors were pointed out and the court noted [D74]:-

> "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 reintegration in that State."

10. Mr Jarvis essentially said that the litany of criminality has two consequences: First, it demonstrated the extent to which a person, the Appellant, has not integrated into UK life and customs and a sense of responsibility. It also significantly broke up any period in the ten years as claimed by the Appellant. Whilst he has spent most of his adult life in the United Kingdom, he has repeatedly offended and such work as he has done between any periods when he has been detained are not so much integration as simply a part of the fact that he has been here in circumstances where he did not work but rather committed crimes.

11. A sidewind to this point was that the Judge assessed the Appellant's criminality, the extent to which it had escalated, the lack of real remorse, the fact that there was no ongoing rehabilitation or considerations which might indicate remorse or a wish to reintegrate in to the United Kingdom, and of course the realities of the harm his criminality did, or would have done.

12. The Judge was entitled therefore to take into account, as a consideration of the integrative status of the Appellant, the risks of further offending and the lack of insight or rehabilitation within the UK. There was nothing to conclude, if the Appellant understood the impact of his criminality and wished to rehabilitate, there was any reason why he could not do so in Poland. The Judge with a range of material, had the opportunity to hear the Appellant and assess the claims as it was put, and it seemed to me that there was nothing to indicate the Original Tribunal made any error of law in assessing the claim and concluding that the Appellant did not have the benefit of the higher threshold required in what are sometimes called

"imperative grounds", but rather that there were serious grounds of public policy and public security to justify the decision to remove him.

13. I agree with Mr Jarvis as to the calculation of ten years' residence in the UK, as a qualified person and that there was no need for imperative grounds.

14. Mr Mohzam essentially sought to diminish the Appellant's criminality and whilst it is correct to say that criminality does not mean a person is not integrated, per se, I find the sequence recited in the decision of the Judge gives an unhappy insight into the fact that for whatever reasons the Appellant has offended and reoffended at will and had long since ceased to be integrated within the UK.

15. I did not find there was any arguable material error of law made by the Judge.

NOTICE OF DECISION

16. The Original Tribunal's decision stands.

17. The appeal of the Appellant is dismissed.

ANONYMITY DIRECTION

No anonymity direction is required.

Signed Date10 April 2019

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT
FEE AWARD

No fee was paid. No fee award is appropriate.

Signed Date 10 April 2019

Deputy Upper Tribunal Judge Davey