Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA 00529 2017

THE IMMIGRATION ACTS

Heard at Centre City Tower	**Decision & Reasons Promulgated**
On 13 December 2018	**On 05 February 2019**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

ANDRZEJ CHORAZY
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: The appellant did not appear and was not represented
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The respondent, hereinafter the Claimant, did not attend before me. This is the second occasion he has not attended before the Upper Tribunal. Notice of hearing was sent to his last known address in Dudley in the West Midlands on 13 November 1998. The notice clearly referred to the hearing today required him to attend for a 10 o'clock start. I am satisfied that he has been given proper service under the Rules although whether he knows about it must be a matter of some doubt because this is a man who, as he is perfectly entitled to do. moves around apparently pursuing work.

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2. The appeal is brought by the Secretary of State against the decision of the First-tier Tribunal allowing the Claimant's appeal against deportation. The Claimant is a citizen of Poland who has a substantial criminal record dating back many years. The most recent offences which I consider to be relevant for reasons that will be explained below, led to his being disqualified from driving and made the subject of some kind of community order at the Black Country Magistrates' Courts on 9 March 2017. He had pleaded guilty to the offence of driving a motor vehicle whilst uninsured, without the necessary test certificate, and, much more importantly, with excess alcohol in his blood. His previous last known criminal offence was in Germany when he was fined on 29 January 2016 for an offence of theft. Apparently he stole alcohol. Before that at a district court in Poland he was made the subject of a community order, later leading to a prison sentence, for driving whilst unfit through drink or drugs. He committed that offence in February 2015.

3. There are other offences and they are more serious.

4. The First-tier Tribunal was very aware of its obligations and matters to consider in the case of an EEA deport and reminded itself, correctly, that deportation is not permissible under Regulation 27(5) of the Immigration (European Economic Area) Regulations 2016 unless:

> "The personal conduct of the person concerned 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 the threat does not need to be imminent."

5. The recent offences of the Claimant are not of the most serious kind but I do not for a moment underestimate the importance to be attached to driving a motor vehicle whilst intoxicated. That is an offence which can often lead to much more serious offences because people can be killed. It is wrong because it shows an irresponsible attitude or an inability to control the consumption of alcohol and it is conduct that very often leads to extreme danger to members of the community. I am satisfied that it is a serious offence and I am satisfied that any tendency to repeat that kind of behaviour would be sufficient to warrant a finding that the conduct represents a genuine present and sufficiently serious a threat affecting one the fundamental interests of society. I make the point that offences of this kind, although not as serious as some, can have very wide ranging and indiscriminate effect on other people. In some ways they are more serious than a one-off offence committed against an enemy because they show conduct that creates problems for people completely unconnected with the appellant and there might be literally thousands of people who could come across his behaviour.

6. The judge had the advantage, unlike me, of hearing from the Claimant and the judge concluded that "the respondent has not shown on the balance of probabilities that the appellant is likely to continue to reoffend."

7. The judge noted that the claimant had been a “fairly regular offender in the past” and then referred to his being convicted in February 2015, January 2016 and March 2017. The judge was clearly impressed by the Claimants evidence that he wanted to stay in the United Kingdom and that he was “getting older” and wanted to put this sort of behaviour behind him.

8. I have no hesitation in saying that I do not think for a moment that is the decision I would have reached on this evidence. The Claimant’s past behaviour indicates a person who gets into trouble because he cannot leave alone alcohol and an assurance even if given with the utmost sincerity in the witness box is not something to which very much weight would ordinarily be attached given this man’s history. It was not, for example, supplemented with evidence that he had joined an alcoholic support group or had some other reason to show an ability to keep away from alcohol. I am not saying this man is an alcoholic there is no evidence for that I am simply saying this is not a case where there is evidence of the kind I have indicated that would give reason to reinforce a declaration that he did not wish to reoffend.

9. The grounds are lengthy and Mr Mills appropriately has pruned them and essentially maintains, as has to be his case, that the judge was perverse in not following the correct self-direction about further offending. I have reflected very hard on this and I have reminded myself that I did not have the advantage of hearing the appellant give evidence. For all that I cannot see how that judge’s conclusion can be justified. There was only a short period when the Claimant was not getting into trouble. He was in detention for much of it and knew that this whole matter was hanging over him for the rest of it. That is a matter which concentrates the mind, or can be expected to, and is really a very skimpy indicator indeed of future conduct.

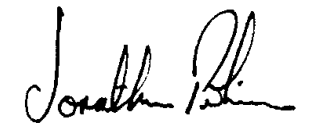
10. Given that this man seems in the recent past to have almost annual appearances for alcohol related offences I am satisfied that the judge was just not entitled to reach that conclusion and I find that the judge erred in law by making a decision that was not open on the evidence. I therefore set aside the decision.

11. I find that the evidence points only to the conclusion that there is every likelihood of further reoffending. The longer the Claimant is able to keep himself out of trouble the weaker that position becomes but presently I do not accept that it can be said with any confidence that there will not be further offending. Rather I find the evidence points to the fact that there will be further offending and I substitute a decision dismissing the Claimant’s appeal against the decision the Secretary of State.

Notice of Decision

12. The First-tier Tribunal erred in law. I set aside its decision and I substitute a decision dismissing the Claimant's appeal against the decision of the Secretary of State.

Signed



Jonathan Perkins
Judge of the Upper Tribunal

Dated 28 January 2019