



**Upper Tribunal
(Immigration and Asylum Chamber)**

DA/00604/2019 (V)

THE IMMIGRATION ACTS

Heard by *Skype for Business*
on 9 September 2020

Decision & Reasons Promulgated
on 11 September 2020

Before

Upper Tribunal Judge Macleman

Between

ANDRZEJ [F]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr Rea, of Rea Law, Solicitors
For the Respondent: Mr Howells, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. On 4 December 2019, the respondent made a decision to deport the appellant under the Immigration (EEA) Regulations 2016. FtT Judge David C Clapham, SSC, dismissed his appeal by a decision promulgated on 17 April 2020. On 20 May 2020, the FtT granted permission to appeal to the UT, on the view that the judge arguably did not deal with the wide range of considerations in regulation 27 (5).
2. The hearing on 9 September 2020 was clerked from the tribunal hearings centre at George House, Edinburgh. I conducted it from a hearing room at the tribunals hearing centre, Aberdeen. Representatives attended

remotely. No members of the public attended, either in person or remotely.

3. (The ground of appeal is as set out in regulation 36, not in section 82 of the 2002 Act, as stated by the FtT.)
4. Mr Howells conceded that the FtT erred by referring to *Goralczyk*, [2018] CSIH 60, [2018] SLT 1183, but failing to apply it; by failing to address proportionality in terms of regulation 27; by addressing the best interests of the appellant's three children in cursory terms; and by failing to consider whether the appellant's rehabilitation was more likely in the UK or in Poland.
5. Parties agreed that the outcome should be as follows.
6. The decision of the FtT is set aside, and stands only as a record of what was said at the hearing. Under section 12 of the 2007 Act, and under Practice Statement 7.2, the case is remitted to the FtT for a fresh hearing. The member(s) of the FtT chosen to consider the case are not to include Judge Clapham.
7. No anonymity direction has been requested or made.



9 September 2020
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **"working day"** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent’ is that appearing on the covering letter or covering email.