



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

Appeal Number: DA/00328/2018

**THE IMMIGRATION ACTS**

**Heard at Field House via Skype for  
Business  
On 30 April 2021**

**Decision & Reasons  
Promulgated  
On 4 June 2021**

**Before**

**UPPER TRIBUNAL JUDGE ALLEN**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**BARTOSZ JANUR  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr S Whitwell, Senior Home Office Presenting Officer  
For the Respondent: No appearance

**DECISION AND REASONS**

1. The Secretary of State appeals with permission to the Upper Tribunal against the decision of a Judge of the First-tier Tribunal who allowed the appeal of Mr Janur against the Secretary of State's decision of 8 May 2018 in which it was decided to make a deportation order against him under the Immigration (European Economic Area) Regulations 2016.
2. I shall refer to Mr Janur hereafter as the appellant, as he was before the judge, and to the Secretary of State as the respondent, as she was before the judge.

3. There was no appearance by either the appellant nor the respondent before the judge. The judge heard the appeal on the papers, and allowed it, on the basis that bearing in mind the offences committed by the appellant, he did not find there was a future risk of reoffending or serious harm to the public and it had not been shown that such risks or threats as there were, were genuine, present and sufficiently serious such as to affect one of the fundamental interests of society.
4. The Secretary of State sought and obtained permission to appeal on the basis first that there was a procedural irregularity in that the matter had been determined on the papers and secondly, that the judge erred with regard to the inadequacy of his reasoning.
5. Permission to appeal was refused by a Judge of the First-tier Tribunal, but on renewal permission was granted by a Judge of the Upper Tribunal.
6. At the hearing before me Mr S Whitwell, Senior Home Office Presenting Officer, appeared on behalf of the Secretary of State. There was no appearance by or on behalf of Mr Janur.
7. Mr Whitwell said that the appellant had in fact been removed to Poland on 19 May 2018.
8. I consider that there are material errors of law in the judge's decision. It is unfortunate that the matter has to be dealt with today in the absence of the appellant, but as Mr Whitwell has said, he was removed nearly three years ago and left no forwarding address and therefore it was impossible to contact him to give him notice of today's hearing.
9. I agree with the points made in the grant of permission that the judge in considering Rule 25 of the Procedure Rules failed to consider the discretion and the overriding objective as to whether or not it was fair and just to the respondent to proceed without a hearing. Although there was a notice of 12 February 2019, this did not make it clear that the matter was to be decided on the papers and without a hearing. On the letter sent out on that date the box marked no representative or sponsor in the United Kingdom has been nominated was crossed. Although there is a reference towards the end of the directions to the fact that a copy of the Tribunal's decision on the appeal would be sent in due course, it was not made clear that the matter would be dealt with on the papers. Accordingly I consider that the judge erred in law in that regard.
10. I also consider that the judge erred in law with regard to the second ground in which it is contended that he failed to consider whether the totality of the appellant's offending suggested that he represented a genuine, present and sufficiently serious threat to the fundamental interests of the United Kingdom. I agree with Judge Blundell, who granted permission, that the difficulty of the judge's task could not be overstated and no criticism of her is intended. She had very little from the respondent and nothing at all from the appellant. However, I do consider

that she did not address sufficiently the question of whether there was a pattern of offending of a similar nature which was indicative in itself of a risk of future offending. As a consequence I find an error of law in that regard also. In light of the fact that there has in effect been no proper hearing in this case, the matter is remitted for a full hearing before the First-tier Tribunal at Hatton Cross before a judge other than Judge Graves.

11. No anonymity direction is made.

A handwritten signature in black ink, appearing to be 'Allen', written in a cursive style.

Signed

Date 1<sup>st</sup> June 2021

Upper Tribunal Judge Allen