



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DA/00582/2019

**THE IMMIGRATION ACTS**

Heard remotely via Skype for Business  
On 1 March 2021

Decision & Reasons Promulgated  
On 10 March 2021

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

KB

(ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the Appellant: Mr McVeety, Senior Home Office Presenting Officer

For the Respondent: Mr J Metzger

**DECISION AND REASONS**

1. I shall refer to the appellant as the 'respondent' and the respondent as the 'appellant', as they appeared respectively before the First-tier Tribunal. The appellant was born in 1975 and is a citizen of Poland. He was convicted on 12 August 2019 of damaging property so as to recklessly endanger life (he interfered with the braking system of his wife's motor car) and was sentenced to 39 months' imprisonment. The Secretary of State made a deportation order in respect of the appellant on 25 November 2019. The appellant appealed to the First-tier Tribunal which, in a decision promulgated on

13 November 2020, allowed the appeal. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The grounds cite Schedule 1 (2-4) of the Immigration (EEA) Regulations 2016 in support of the submission that the was wrong in law by finding that the appellant's integrative links to the United Kingdom had not been severed by his imprisonment:

2. An EEA national or the family member of an EEA national having extensive familial and societal links with persons of the same nationality or language does not amount to integration in the United Kingdom; a significant degree of wider cultural and societal integration must be present before a person may be regarded as integrated in the United Kingdom.

3. Where an EEA national or the family member of an EEA national has received a custodial sentence, or is a persistent offender, the longer the sentence, or the more numerous the convictions, the greater the likelihood that the individual's continued presence in the United Kingdom represents a genuine, present and sufficiently serious threat affecting of the fundamental interests of society.

4. Little weight is to be attached to the integration of an EEA national or the family member of an EEA national within the United Kingdom if the alleged integrating links were formed at or around the same time as –

- (a) the commission of a criminal offence;
- (b) an act otherwise affecting the fundamental interests of society;
- (c) the EEA national or family member of an EEA national was in custody.

3. The Secretary of State contends that the judge failed to give adequate reasons for finding that the appellant is integrated into life in the United Kingdom such that his imprisonment did not sever his integrative links. The appellant has been resident in the United Kingdom since 2005. The judge found that the appellant was entitled to the higher level of protection afforded by regulation 27(4) of the Immigration (EEA) Regulations 2016:

(4) A relevant decision may not be taken except on imperative grounds of public security in respect of an EEA national who –

- (a) has resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision;

4. The Secretary of State's grounds do not seek to argue that the appeal should have been dismissed if the judge had been correct to apply 'imperative grounds of public security'. Paragraph [6] of the grounds argues that the an assessment of proportionality on the basis of the lesser level of protection (serious grounds of public policy) would, on the facts, have resulted in the appeal being dismissed.

5. The Court of Appeal in *Hussein v Secretary of State for the Home Department* [2020] EWCA Civ 156 considered the recent European authorities *MG (Portugal) C-400/12*, *B v Land Baden-Württemberg (C-316/16)*. The latter authority held at [83]:

83. In the light of all the foregoing, the answer to the first three questions in Case C:316/16 is that Article 28(3)(a) of Directive 2004/38 must be interpreted as meaning

that, in the case of a Union citizen who is serving a custodial sentence and against whom an expulsion decision is adopted, the condition of having 'resided in the host Member State for the previous ten years laid down in that provision may be satisfied where an overall assessment of the person's situation, taking into account all the relevant aspects, leads to the conclusion that, notwithstanding that detention, the integrative links between the person concerned and the host Member State have not been broken. Those aspects include, *inter alia*, the strength of the integrative links forged with the host Member State before the detention of the person concerned, the nature of the offence that resulted in the period of detention imposed, the circumstances in which that offence was committed and the conduct of the person concerned throughout the period of detention.

In his submissions, Mr Metzger stressed the evidential basis for the judge's findings at [18] that the 13 months which the appellant had spent in prison failed to sever the integrative links to the host nation forged over 15 years since 2005. The factual matrix included the appellant's extensive business activities (as shown by his tax returns and other documents), his property ownership (he continued to pay the mortgages on these properties even when in prison), his completion of a course in Mathematics. Whilst the judge notes that the appellant's father lives in the United Kingdom, I accept Mr Metzger's submission that the evidence which the judge accepted shows that the appellant's relationships with individuals in the United Kingdom were not restricted to Polish nationals living here; it is clear that his activities, both social and business, have taken place in the wider community of Manchester where he has lived. I accept also that the sentencing judge acknowledged that, notwithstanding his offending towards them, the appellant has sought to re-establish contact with his daughter. I find that the judge did not play down the seriousness of the appellant's offending which he addresses in some detail at [20-21] nor did he ignore elements of the appellant's conduct following the commission of his offence which might impact negatively on his claim of continued integration (eg. his lack of remorse or acceptance of guilt). Mr Metzger's skeleton argument asserts more than once that the fact the judge did not refer in terms to Schedule 1 was not in itself an error of law but I do not consider that the Secretary of State advances that argument. Rather, the respondent argues that the judge failed to 'have regard' to that provision. Having considered the decision of the First-tier Tribunal as a whole and having been helpfully directed by Mr Metzger to the evidence of the appellant's life in the United Kingdom which was before the judge, I am satisfied that the judge has reached findings which were not at odds with the jurisprudence (*Hussain*) or the proper application of the provisions of Schedule 1. In short, it was not perverse on the particular facts for the judge to find that the appellant's links to his host nation had not been severed by his imprisonment. The judge reached those findings having regard to relevant evidence whilst he did not give weight to irrelevant matters. Whilst another judge may have reached a different outcome, that is not the point. I can identify no reason to interfere with the judge's analysis. Consequently, the appellant was entitled to the higher, 'imperative' level of protection of which his offending and subsequent imprisonment have not deprived him. Accordingly, the Secretary of State's appeal is dismissed.

**Notice of Decision**

The Secretary of State's appeal is dismissed.

Signed

Date 02 March 2020

Upper Tribunal Judge Lane

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.