



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00629/2018

THE IMMIGRATION ACTS

Heard remotely by Skype for Business
On 24 February 2021

Decision & Reasons Promulgated
On 4 March 2021

Before

UPPER TRIBUNAL JUDGE LANE

Between

ADAM PRZEMYSŁAW KASPERSKI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Nathan

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Poland who was born on 6 September 1980, appeals against a decision of the First-tier Tribunal which was promulgated on 6 January 2020. By that decision, the First-tier Tribunal dismissed the appellant's appeal against a decision of the Secretary of State to deport the appellant to Poland in accordance with Regulation 23 of the Immigration (EEA) Regulations 2016.
2. At the initial hearing on 24 February 2021, I indicated to the parties and to the appellant that I intended to allow the appeal, set aside the decision of the First-tier

Tribunal and return the appeal to the First-tier Tribunal for that Tribunal to remake the decision. I shall now briefly give my reasons.

3. The appellant claimed to have lived and worked in the United Kingdom from 2006. The appeal turned on the question of whether he was entitled to protection at the 'higher' level afforded by Regulation 27(4) on account of his length of residence/exercise of Treaty Rights whilst having regard also to the effect the appellant's three periods of imprisonment (none longer than 9 months) may have had on the level of integration he had achieved in United Kingdom society. At the initial hearing, both representatives agreed that, in her analysis, the judge had failed to carry out an assessment as described by the Court of Justice of the European Union in *B v Land Baden-Württemberg (C-316/16)/Secretary of State for the Home Department v Franco Vomero (C-424/16)* at [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.

4. In the circumstances, I set aside the decision of the First-tier Tribunal and return the appeal to the First-tier Tribunal for that Tribunal to remake the decision at or following a hearing *de novo*. None of the findings of fact shall stand.

Notice of Decision

The decision of the First-tier Tribunal is set aside. I return the appeal to the First-tier Tribunal for that Tribunal to remake the decision at or following a hearing *de novo*. None of the findings of fact shall stand.

Signed

Date 25 February 2021

Upper Tribunal Judge Lane