IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001734

First-tier Tribunal No:
EA/07762/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 4 December 2023

Before

UPPER TRIBUNAL JUDGE SMITH

Between

MR KAROL KAMIL KALISZEWICZ
(NO ANONYMITY DIRECTION)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Kaliszewicz in person, assisted by Polish interpreter
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard at Field House on Monday 30 October 2023

DECISION AND REASONS

BACKGROUND

1. By a decision promulgated on 5 September 2023, I found an error of law in the decision of First-tier Tribunal Judge Seelhoff itself promulgated on 25 April 2023. By his decision, Judge Seelhoff allowed the Appellant's appeal against the Respondent's decision dated 22 July 2022 making a decision to deport him to Poland, under sections 5 and 3(5) Immigration Act 1971 and of 10 October 2022 refusing his human rights claim (Article 8 ECHR).

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2. Having found an error of law in Judge Seelhoff's decision, I set that aside and gave directions for a resumed hearing before me. I did not preserve any of Judge Seelhoff's findings. I directed that the Appellant file not only any additional evidence on which he wished to rely but also the evidence before the First-tier Tribunal as this Tribunal did not have that evidence. Although he complied with that latter direction, he did not file any additional evidence.

3. In the course of the Appellant's evidence and that of his partner, mention was made of two documents which may have been relevant to the issues I have to consider.

4. One was a letter from a social worker. Although I understood that this was not a formal social worker's report about the impact of the Appellant's deportation on his child, it was an assessment of whether the Appellant should be allowed to return to the family home following his release from prison. I was told that this document was given to Judge Seelhoff but did not appear with the evidence (re)filed by the Appellant before me.

5. The second was a letter from the Appellant's probation worker apparently discharging him from further reporting. That may have been relevant to the issue of continuing risk posed by the Appellant.

6. As it was, although I gave the Appellant permission to file and serve those documents after the hearing (by 4pm on Friday 3 November), they have not been filed. I am not therefore able to take them into account.

7. In terms of the documents before me, I had the Respondent's bundle before the First-tier Tribunal and various items of evidence from the Appellant. Since the latter are not in the form of a paginated bundle, I will refer to them as necessary by their content.

8. The factual background to this appeal appears at [2] to [4] of the error of law decision and I do not repeat what is there said. There is little dispute regarding the facts. I will however need to say a little more about the Appellant's offending, his alcohol problems and his relationship with his partner and daughter when I turn to deal with the evidence.

9. The Appellant and his partner Natalia Dabrowska both gave oral evidence and were cross-examined by Ms Cunha. The Appellant gave his evidence and made submissions via a Polish interpreter. There were no difficulties of understanding. Ms Dabrowska gave her evidence in English. I found both to be credible witnesses who gave their evidence honestly and very fairly.

10. Having heard that evidence and submissions from Ms Cunha and the Appellant, I indicated that I intended to reserve my decision and would provide that in writing which I now turn to do.

LEGAL FRAMEWORK

11. As I set out at [5] and [6] of the error of law decision, and as noted above, the decisions here under appeal are ones to deport the Appellant to Poland and to refuse a human rights claim.

12. The former deportation decision is made under powers in the Immigration Act 1971 but in the context of a deportation to an EU member state, gives rise to a right of appeal under paragraph 6 of the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020. The available grounds are that the decision is not in accordance with the withdrawal agreement between the UK and EU which followed the UK's exit from the EU ("the Withdrawal Agreement"). The Appellant has not put forward any argument in that regard.

13. The other available ground is that the decision is not in accordance with section 3(5) Immigration Act 1971. To that extent there is some overlap with the human rights ground which has been the focus of the appeal.

14. In relation to the refusal of the human rights claim, the Appellant can appeal only on the basis that deportation would breach his human rights. The Tribunal must take into account in that regard section 117 Nationality, Immigration and Asylum Act 2002 ("Section 117").

15. In this case, the Appellant has never been sentenced to a term of imprisonment of twelve months or more. As such, he can only fall within the definition of a foreign criminal under Section 117D if his offences are ones which have caused serious harm or if he is a persistent offender. The Respondent relied on the serious harm definition. Judge Seelhoff rejected that but found that the Appellant is a persistent offender. I did not preserve that finding. Both issues are therefore ones which I am required to determine afresh.

16. Turning first to whether the Appellant's offences have caused serious harm such that Section 117D(2)(b)(ii) applies, I have regard to the Tribunal's guidance in Wilson (NIAA Part 5A; deportation decisions) [2020] UKUT 00350 (IAC) ("Wilson"). In this case, however, I am unable to take into account either sentencing remarks or a victim impact statement as the Appellant's offences were all dealt with in the Magistrates Court. I am therefore reliant on what is said by the Respondent as justifying this categorisation and the Appellant's own evidence about the nature and extent of his offences.

17. I bear in mind however, what is said at section A [3(f)], [3(g)] and [3(h)] of the headnote in Wilson which factors appear to me to be particularly relevant in this case as follows:

> "(f) Serious harm can involve physical, emotional or economic harm and does not need to be limited to an individual;
> (g) The mere potential for harm is irrelevant;
> (h) The fact that a particular type of offence contributes to a serious/widespread problem is not sufficient; there must be some evidence that the actual offence has caused serious harm".

18. I also have regard to what is said at section B(2) of the headnote as follows:

> "The Secretary of State's decisions under the Immigration Act 1971 that P's deportation would be conducive to the public good and that a deportation order should be made in respect of P would have to be unlawful on public law grounds before that anterior aspect of the decision-making process could inform the conclusion to be reached by the First-tier Tribunal in a human rights appeal."

19. In relation to whether the Appellant is a persistent offender for the purposes of Section 117D(2)(iii), as the Tribunal said in Chege ("is a persistent offender") [2016] UKUT 00187 (IAC) ("Chege"), "[t]he question whether the appellant 'is a persistent offender' is a question of mixed fact and law and falls to be determined by the Tribunal as at the date of the hearing before it".

20. That an appellant may once have been a persistent offender due to continuous breaking of the law does not mean that the offending must be maintained until the date of the decision under appeal. Continuity may be broken. However, the point is made that an appellant "can be regarded as a 'persistent offender' …even though he may not have offended for some time". The issue has to be assessed based on "the overall picture and pattern of [an appellant's] offending over his entire offending history" to date. The assessment turns on the facts of the case.

21. In the event that I conclude that the Appellant is a "foreign criminal" under Section 117D, then I have to apply the framework set out in Section 117C. That would require the Appellant to show that he meets one or other of the exceptions in Section 117C or that there are very compelling circumstances over and above those exceptions.

22. However, if I conclude that the Appellant is not a "foreign criminal" then I need to go on to assess the Article 8 claim on that basis, balancing the interference with the family and private life of the Appellant and his partner and child against the public interest which would still take account of the Appellant's offending. I must also have regard to the factors in Section 117B.

THE EVIDENCE

23. I do not set out all the evidence I heard or make reference to all the documents before me. I refer only to that evidence, both oral and documentary, which is relevant to the issues I have to consider. I have however read all the documents and considered all the oral evidence when making my findings and reaching my conclusions.

The Appellant's Offending

24. The Appellant was convicted for offences of shoplifting in 2008 and for a driving offence in 2019. In 2021 and 2022, the Appellant was convicted of various offences of violence including against emergency workers. The most recent offence led to a conviction on 28 June 2022 for which the Appellant was sentenced to a term of nine months in prison. His offending is linked to a history of alcohol problems.

25. The Appellant admitted in his oral evidence that he has a history of aggression when under the influence of alcohol. He described himself as being in a state which he cannot control.

26. The Appellant also admitted that all his offences have been alcohol related. That included the driving offences. In fact, he admitted that some of the offences of violence against emergency workers were committed in order to prevent arrest and being breathalysed (therefore admitting that he was also driving whilst under the influence of alcohol for which he could not be prosecuted because he avoided being breathalysed).

27. I went through the history and detail of the Appellant's convictions with him. From his oral evidence, I was able to understand the following chronology:
    - 2008: shoplifting: conviction: fine and costs.
    - Appellant was then out of the UK in the Netherlands until December 2014 - no offences until 2019.
    - 24 July 2019: conviction for driving whilst uninsured, without a licence and with excess alcohol: community order, costs, driving disqualification, unpaid work requirement and victim surcharge.
    - 26 November 2019: conviction for failing to provide specimen and driving whilst disqualified: 12 months suspended sentence suspended for 24 months, costs, driving disqualification, unpaid work and rehabilitation requirement, victim surcharge: Appellant accepts he was driving under the influence of alcohol.
    - 10 December 2021: conviction of two counts of assault by beating an emergency worker, battery and offending during suspended sentence: compensation, community order, unpaid

work requirement, football banning order, victim surcharge: Appellant confirmed this offence took place at a football match when he was drunk and when he resisted arrest.

- 25 April 2022: conviction of resisting or obstructing constable, using vehicle whilst uninsured, two counts of assault by beating an emergency worker, driving whilst disqualified and failing to stop when ordered to do so: community order, costs, unpaid work, driving disqualification and licence endorsement and victim surcharge: Appellant gave evidence that he was using an electric scooter whilst under the influence of alcohol and the violence offences were in order to try to prevent a check of his alcohol level.
- 15 June 2022: conviction of three counts of assault by beating an emergency worker, assault occasioning actual bodily harm: imprisonment for four weeks on each of the counts of assault by beating to run concurrently and a concurrent sentence for the ABH of thirty-six weeks: Appellant gave evidence that he threw something at a man and then assaulted the police who tried to arrest him. He admitted that he had caused harm to the man who he attacked.
- 6 December 2022: Appellant was released from prison and immigration detention.

<u>Prevention of future offending/ risk</u>

28. The Appellant and Ms Dabrowska provided evidence of factors which they said had reduced the Appellant's risk of reoffending.

29. The Appellant said that his relapse in 2022 was caused by the death of his father. He was unable to cope and so he had resorted to drink. As Ms Cunha pointed out, this suggested that the Appellant does not (or did not in 2022) have the ability to cope with difficult situations without relapse.

30. The Appellant has however taken what might be seen as quite extreme measures to deal with his alcoholism. He has had an implant fitted at a cost of £600. This will prevent him from being able to tolerate alcohol for one year. He has also attended a programme via CGL. He began this whilst in prison and continued for six months after release. He said that the doctor had said that this was enough.

31. The Appellant has provided a letter from E Webb of Pathways to Recovery Substance Misuse Service at HM Prison Wandsworth dated 4 November 2022. This confirms that "CGL Pathways to Recovery at HMP Wandsworth is a low threshold intervention service provided for people in prison who indicate that they would like support and advice in making or beginning to make changes around their

problematic Drug and Alcohol use". As a voluntary service, it is to the Appellant's credit that he has sought out this help.

32. The letter also confirms that the Appellant has engaged with the service since September 2022, that he has "substance related needs which require further intervention" but that the Appellant has "shown enthusiasm" during his time in prison and "is determined to reform himself in a positive way".

33. The letter also indicates that the Appellant was referred to "CGL psychosocial interventions" and had attended all appointments which he was offered whilst on licence. Although the letter refers to the Appellant not being able to return to his home address when released in December 2022 as the police had been called to that address previously, I understand that issue has since been resolved (presumably this was the subject of the social worker's letter which was mentioned in evidence).

34. The letter goes on to say the following:

> "Mr Kaliszewicz has in place current referrals for support with his alcohol misuse and accommodation. Mr Kaliszewicz now has the support from Interventions Alliance to work towards gaining suitable accommodation and CGL to support him with his issues with alcohol. Mr Kaliszewicz states he takes responsibility for the offences he has committed, and we will continue to work in supervision on things that can support his rehabilitation, alcohol misuse and thinking skills."

35. Unfortunately, I do not have the letter from the Probation Service confirming the Appellant's discharge. I accept however that it is likely that he has now been discharged given the date and term of his last sentence.

36. The Appellant confirmed that he has not touched alcohol since his release from detention. I bear in mind that this was only about eleven months prior to the hearing before me. I also take into account Ms Cunha's point as put to the Appellant that, if it is the case that he is deterred from consuming alcohol by the implant which is removed after one year, he might reoffend once that is removed.

37. Against that, as the Appellant pointed out, there have been periods of non-offending in the past.

38. The Appellant and Ms Dabrowska also prayed in aid as a deterrent factor, the Appellant's family circumstances. As Ms Cunha pointed out, the Appellant has committed offences after the birth of his daughter (she was born in October 2018). I was however impressed by Ms Dabrowska's answer to Ms Cunha's question about what had changed. She said that on this occasion the Appellant had been sent to prison. This had not happened before. Both he and she had

found this a difficult period and she had threatened that, if he resorted to alcohol and offended again, she would leave him and take their daughter with her. She had never made that threat before. She considered that he had taken the threat seriously. I believed that she fully intended to carry out that threat if the Appellant were to reoffend.

Personal and Family Circumstances

39. The Appellant was aged about twenty-one years when he came to the UK in 2008. He had graduated from technical school in Poland. He had not worked before coming here. He worked as an agency worker in the UK until 2010 when he went to work in the Netherlands until 2014. His half-brother had helped him to settle in the UK and with the formalities to move to the Netherlands.

40. The Appellant did not speak English at all when he came. Nor did he speak Dutch. He said he had managed to find work notwithstanding those obstacles and that if one wanted to work, it was possible to find a job. He accepts in his written evidence that he could find a job in Poland if he returned there. However, he said that he came to the UK for a better life. He also said that Poland is not safe due to its proximity to Ukraine.

41. The Appellant accepted that his family remain living in Poland. His mother lives there. He has no siblings. His mother lives in a flat there. She is retired and in receipt of a pension.

42. Ms Dabrowska came to the UK in July 2008. She lived with her sister and her sister's family when she arrived. She has worked throughout her stay in the UK and now has indefinite leave to remain under the EU Settlement Scheme.

43. The Appellant and Ms Dabrowska met in 2016.

44. Ms Dabrowska said in her written evidence that she did not wish to return to Poland. She repeats the Appellant's concerns about prospects there and safety.

45. Ms Dabrowska does however have family in Poland. Her mother remains there. Her father has passed away. Her sister who was living in the UK has returned. Ms Dabrowska has visited her family with her daughter many times. The Appellant also confirmed that he has met Ms Dabrowska's family during visits to Poland. They stay either with his mother or Ms Dabrowska's mother.

46. The Appellant confirms that their daughter, Z, has visited Poland numerous times. She is currently aged five.

47. Ms Dabrowska very fairly accepted that, if the Appellant were deported to Poland, she and Z would probably go with him. She said that it might be difficult to find a job as she had never worked there. Ms Dabrowska was asked about the ability of their respective mothers to help the family settle in Poland if they returned there. She did not think that his mother would be able to help as she is over seventy and has health issues. She could not imagine how they would manage.

48. Ms Dabrowska and the Appellant also pointed out that their daughter was born here and had friends here. The Appellant said that he did not want Z to have to start again.

49. In terms of the Appellant's involvement in Z's life, Ms Cunha pointed out that the written evidence contains very little detail of the relationship. The Appellant gave oral evidence that he was very close to his daughter. Ms Dabrowska described him as a great father. She gave evidence that Z and the Appellant go to the cinema together and play together. When asked whether she was concerned that the Appellant would drink when he was caring for Z, she said that this definitely would not happen. Even when he had been drinking, he had never drunk when Z was there.

50. Although Ms Dabrowska works only part time at weekends, she said that the Appellant collects Z from school. He also referred to attending parents' evenings at school.

51. The Appellant and Ms Dabrowska confirmed that when the Appellant was in prison, Z had not visited him. She had been told that he was in Poland sorting out his father's affairs. They had spoken on the phone and via video.

52. Ms Dabrowska again very fairly accepted that if the Appellant were deported and she were to remain in the UK, she would continue to work and would manage her daughter as best she could. Z is now in education. Her mother had come to help out when the Appellant was in prison.

53. In terms of work in the UK at the present time, the Appellant and Ms Dabrowska confirmed that he carries out unpaid work (although it appears that this may be as part of his sentence). The Appellant also said that he worked as a handyman in the community. He said he could ask for references but "this was not a nice thing to ask for".

54. The Appellant has provided letters of support from friends and previous employers which I have read. Although Ms Cunha pointed out that these witnesses had not attended to give oral evidence, I am prepared to give some weight to those as attesting to the Appellant's character and commitment to his family. I can however

give less weight to them in relation to risk as they paint an overly positive picture of the Appellant's ability to deal with his alcohol addiction in the past.

FINDINGS, DISCUSSION AND CONCLUSION

55. Ms Cunha made submissions which are reflected in the discussion which follows. As the Appellant is in person, I talked him through the various headings of issues with which I have to deal and invited his submissions in relation to each. Again, those are taken into account in the discussion below.

56. I deal first with whether the Appellant's offences can be said to have caused serious harm. I am dependent in this regard on the Appellant's own evidence. He was though very candid about the detail of his offences. He accepted that, particularly in relation to his most recent offence, he would have caused harm to the victim at whom he had thrown something. He even said that the harm was serious without understanding the potential legal connotations of that admission.

57. I have to consider the offences on all the evidence. In relation to the traffic offences when the Appellant was in charge of vehicles whilst over the legal alcohol limit, those clearly had the propensity to cause harm but fortunately did not do so.

58. The Respondent relies on the fact that the Appellant has on occasion assaulted emergency workers. That factor may well aggravate the offence in terms of criminal sentence but has no relevance to whether the actual harm caused has been serious. I accept that an assault will have caused some harm to the individual police officers, but I have no evidence on which to base a finding that such harm was serious.

59. As noted above, the Appellant accepted that he had caused harm to the victim during his most recent offence. However, again, I have no evidence about the level of harm, and I do not take the Appellant's evidence that it would have been serious as an acceptance that he meets the threshold. The offence was categorised as actual bodily harm and not grievous bodily harm. The sentence on that aspect was only thirty-six weeks (and that in the context of the Appellant's previous offending).

60. Overall, and whilst I do not seek to minimise the Appellant's offences, I find that the offences are not ones which caused serious harm.

61. Turning then to whether the Appellant is a persistent offender, I must assess this at the date of hearing.

62. There is no doubt that the Appellant has offended quite regularly over three years, culminating in the most recent offence. I accept that he was released less than one year ago.

63. However, that offending was all linked to alcohol misuse. The Appellant has given evidence that he has not drunk since going into prison. He has taken the quite extreme step of having an implant inserted to prevent himself drinking and has undertaken a course to support his rehabilitation from alcohol misuse.

64. I take into account Ms Cunha's submission that the Appellant may relapse once the implant is removed and now that the course has come to an end. However, I place weight on Ms Dabrowska's evidence that the Appellant will be deterred from resuming his drinking and offending behaviour by her threat to leave him, taking their daughter if this were to reoccur. As I have already said, I believed that Ms Dabrowska had every intention of carrying that threat through if the Appellant resumes drinking and reoffends. I am also persuaded from seeing the Appellant and Ms Dabrowska together that they have a solid relationship and that Ms Dabrowska's threat will be sufficient to act as a deterrent to future offending.

65. For that reason, and notwithstanding the short period of time for which the Appellant has been at liberty since his most recent offence, I conclude that the Appellant is not a persistent offender.

66. Those findings mean that the Appellant does not fall within the definition of a "foreign criminal" in Section 117D.

67. However, the issue for me is whether the Appellant's deportation under the powers in the Immigration Act 1971 breaches his human rights and the rights of those impacted by his deportation, that is to say Ms Dabrowska and their daughter, Z. Even though I have concluded that the Appellant does not fall within the definition of a "foreign criminal", his criminal offending is still a factor which weighs against him in the balancing assessment and in favour of the public interest.

68. I begin with the best interests of Z. She is British. She has lived in the UK for her entire life. She is relatively young but has recently started school in the UK and has begun to make her own friends.

69. At her young age, Z's best interests are served by being with both her parents wherever they may be living. As I have already noted, the relationship between the Appellant and Ms Dabrowska is a solid one. The evidence I have is that the Appellant has a close relationship also with his daughter and therefore it would be contrary to her best interests to be separated from the Appellant.

70. Ms Dabrowska very candidly said that she would probably go to Poland with the Appellant were he to be deported and obviously in those circumstances Z would go with them. Whilst both the Appellant and Ms Dabrowska have family members remaining in Poland, I accept that the family there will have lesser prospects than they have in the UK. I also accept the evidence that it will be more precarious from a safety perspective due to Poland's proximity to Ukraine.

71. As Z is British, she is entitled to education in this country as a British national. A move to Poland would deprive her of the benefits of her British citizenship. As such, it is in her best interests to remain in the UK but to remain with both her parents here. I place weight on that factor.

72. Turning to the position of Ms Dabrowska, she is Polish by birth but has been living in the UK since July 2008 (when she was aged eighteen). She has never worked in Poland. She has worked in the UK. She has indefinite leave to remain in the UK. She does however have family in Poland (including her mother and sister). She and Z have regularly visited Poland.

73. As to the Appellant, he has also been in the UK since 2008. He has not worked in Poland but accepted that he could find a job in Poland if he had to do so. The Appellant was in the Netherlands between 2010 and 2014. His status in the UK until the making of the deportation order was lawful.

74. Against the private and family lives of the Appellant and his family, I have to weigh the public interest.

75. I consider first the factors in Section 117B (Section 117C does not apply as the Appellant is not a "foreign criminal").

76. Maintenance of effective immigration control is a weighty factor in this case. Although the Appellant was lawfully in the UK exercising Treaty rights until the making of the deportation order, his deportation is based on his criminal offending. Although that offending does not reach the threshold for the definition of a "foreign criminal", the Appellant's criminal offending must be given weight. It has involved motoring offences whilst over the legal limit, and offences including violence against at least one individual member of the public and also against police officers. The fact that offences have been committed against police officers who are acting in the execution of their duty elevates the weight to be given to the public interest.

77. Section 117B (6) has no purchase in this case. Although Z is British, this is a deportation case, and the Appellant cannot therefore benefit from this provision.

78. Although the Appellant was here in exercise of Treaty rights and therefore lawfully, I still give his private life less weight as his stay has been rendered precarious by his offending. He has offended throughout the period from July 2019 and has therefore put his status in the UK at risk. Moreover, I have very limited evidence about his private life. That evidence comes mainly in the form of the letters of support from friends and neighbours to which I have given less weight due to the overly positive picture painted of the Appellant's character.

79. I do not though give any less weight to his family life with Ms Dabrowska. Their relationship began in 2016. Although the Appellant had by that stage been convicted of a minor offence, he had not begun the more recent spate of offending. The Appellant was not in the UK unlawfully.

80. Although the Appellant gave evidence via a Polish interpreter, I do not take that as proof that he is unable to speak English. The appeal is important to him and, particularly since he is in person, it is unsurprising that he would require assistance of an interpreter to present his case. He appears to be able to speak some English. He and Ms Dabrowska are also financially independent. Those are I find neutral factors.

81. Ultimately, the outcome of this case involves a balance between the interference with the Appellant's family life and that of his partner and child against the weight of the public interest due to the Appellant's criminal offending.

82. However, notwithstanding the level and extent of the Appellant's criminal offending in the past, I have found that it is likely that he will not reoffend due to his changed attitude to alcohol and the impact that further offending will have on his relationship with his partner and child. Whilst those considerations do not excuse the Appellant's past behaviour, they lessen the risk of reoffending and therefore the weight to be given to the public interest.

83. It might be said that the impact on the Appellant's family life of deportation is also not a weighty factor, particularly since Ms Dabrowska admitted that she and Z would probably return to Poland with the Appellant were he to be deported. However, that would amount to a significant interference with Ms Dabrowska's life in the UK and her status here. More importantly, it would also deprive Z of the benefits of her British citizenship.

84. I have not found this an easy case to decide. It is on the borderline. However, having carefully balanced the competing interests, I have reached the conclusion that deportation on the facts of this case would breach the Article 8 rights of the Appellant and those affected by the deportation decision. Deportation would amount to a disproportionate interference with those rights.

85. I should add that, had I been persuaded that the Appellant's offending did bring him within the definition of a "foreign criminal" in Section 117D, I would not have reached the same conclusion due to the increased weight to be given to the public interest, the continuing risk of reoffending and the threshold which would have to be reached in relation to the interference with the Article 8 rights of Ms Dabrowska and Z. As it is, though, I have found that the Appellant is not a persistent offender and that his offences have not caused serious harm. Accordingly, the balance is one to be conducted without regard to Section 117C.

86. I also observe that the Appellant should not view this outcome as a victory. It depends on his continued observance of the law and abstinence from alcohol which is the cause of his offending. Were he to reoffend, he should be aware not only that the Respondent would be entitled to reinstitute deportation proceedings but that he would risk losing his partner and daughter.

NOTICE OF DECISION

The Appellant's appeal is allowed on human rights grounds. The decision to deport is a disproportionate interference with the Appellant's Article 8 ECHR rights. It is therefore in breach of section 6 Human Rights Act 1998.

L K Smith

Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 November 2023

APPENDIX: ERROR OF LAW DECISION

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001734

First-tier Tribunal No:
EA/07762/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

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Before

UPPER TRIBUNAL JUDGE SMITH

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR KAROL KAMIL KALISZEWICZ
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr T Lindsay, Senior Home Office Presenting Officer
For the Respondent: Mr Kaliszewicz in person, assisted by Polish interpreter

Heard at Field House on Wednesday 26 July 2023

DECISION AND REASONS

BACKGROUND

1. This is an appeal by the Secretary of State. For ease of reference, I refer to the parties as they were in the First-tier Tribunal. The

Respondent appeals against the decision of First-tier Tribunal Judge Seelhoff promulgated on 25 April 2023 ("the Decision") allowing the Appellant's appeal against the Respondent's decision dated 22 July 2022 making a decision to deport him under sections 5 and 3(5) Immigration Act 1971 and of 10 October 2022 refusing his human rights claim (Article 8 ECHR).

2. The Appellant is a national of Poland. He was convicted for offences of shoplifting in 2008 and for a driving offence in 2019. In 2021 and 2022, the Appellant was convicted of various offences of violence including against emergency workers. The most recent offence led to a conviction on 28 June 2022 for which the Appellant was sentenced to a term of nine months in prison. His offending is linked to a history of alcohol problems.

3. The Appellant initially came to the UK in 2008 and worked here. He then lived in the Netherlands until December 2014. He then returned to the UK where he has lived and worked since. He has a partner and child in the UK. His daughter was born on 5 October 2018 and is British.

4. The Respondent accepts that as the Appellant has lived and worked in the UK since 2014, he has acquired a right of permanent residence. For that reason, on 30 September 2019 he was granted settled status under the EU Settlement Scheme.

5. The Respondent relies on the Appellant's offences after 31 December 2020 as justifying his deportation under the Immigration Act 1971. The Respondent's decision dated 22 July 2022 gives rise to a right of appeal under paragraph 6 of the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020. The available grounds of appeal are that the decision is not in accordance with the withdrawal agreement between the UK and EU which followed the UK's exit from the EU ("the Withdrawal Agreement"). The Appellant may also appeal this decision on the basis that it is not in accordance with section 3(5) Immigration Act 1971.

6. In relation to the decision dated 10 October 2022, the Appellant may only appeal on the basis that his removal would breach his human rights, in particular his right to respect for his family and private life. In determining this ground, the Tribunal must have regard to section 117 Nationality, Immigration and Asylum Act 2002 ("Section 117"). The Appellant was not sentenced to a term of imprisonment of at least twelve months. As such, the issue whether he is a foreign criminal under Section 117D (and therefore whether Section 117C applies) depends on whether he has committed an offence which has caused serious harm or is a persistent offender.

7. The Respondent relied on the Appellant's offences as being ones which caused serious harm. The Judge did not accept this but found

instead that the Appellant is a persistent offender. As such, Section 117C applied. The Judge purported to consider the case applying Section 117C. He found that the Appellant satisfied the second exception in that section (Section 117C (5)) on the basis that the Appellant's deportation would have an unduly harsh effect on his partner and child. He allowed the appeal on that basis.

8. The Respondent appeals that conclusion and the Judge's rejection of her case that the Appellant's offences had caused serious harm. Her first ground challenges the Judge's latter conclusion. Her second ground challenges the Judge's reasoning and conclusion that the Appellant's deportation would have an unduly harsh impact on his partner and child.

9. Permission to appeal was initially refused by First-tier Tribunal Judge Thapar on 13 May 2023 for the following reasons so far as relevant:

> "..3. It can be seen from paragraph 21 the Judge unarguably finds it has not been established that the Appellant's offences have caused serious harm. The Judge was unarguably entitled to conclude there was insufficient evidence before him to make such a finding. The Judge unarguably considers the aggravating factors and the severity of the Appellant's offending at paragraphs 22 and 24, and an assessment of the public interest in the context of section 117C is also unarguably undertaken at paragraph 24.
> 4. It cannot reasonably be argued that the Judge failed to apply the principles in HA (Iraq) given the Judge's assessment in paragraphs 26 to 33.
> 5. It is unarguable that the findings reached by the Judge were open to the Judge on the evidence presented. The grounds amount to no more than a disagreement with the Judge's findings. I can discern no arguable error of law."

10. Following renewal to this Tribunal, permission to appeal was granted by Upper Tribunal Judge Macleman on 21 June 2023 for the following reasons so far as relevant:

> "..2. Ground 1 raises a debate on the tribunal's approach to section 117D (2) of the 2002 Act.
> 3. The decision at [21], finding 'simply no evidence .. as to any serious harm caused', might be read as placing a duty on the respondent to lead extrinsic evidence of the impact of offences rather than the tribunal conducting a common sense evaluation of the information available – see *Mahmood* [2020] EWCA Civ 717.
> 4. There is perhaps tension with other parts of the decision. At [24] the tribunal accepts 'the targeting of emergency workers on repeated occasions' as one indicator of the seriousness of offending.
> 5. The assessment that the appellant caused no serious harm and 'only just' met the definition of a serious offender, was key in the analysis of 'undue harshness'.
> 6. Ground 2, challenging that analysis, is also arguable."

11. The appeal comes before me to determine whether the Decision contains errors of law. If I conclude that it does, I then have to decide whether to set aside the Decision in consequence of those errors. If I set aside the Decision, I then have to go on to either re-make the decision or remit the appeal to the First-tier Tribunal.

12. I had before me the core documents relevant to the challenge to the Decision as well as the Respondent's bundle before the First-tier Tribunal. The Tribunal did not have any documents which the Appellant placed before the First-tier Tribunal (if he did) but the key documents are in the Respondent's bundle. In any event, the issues before me are ones of pure law and I do not need to refer to any of the documents.

13. Having heard submissions from Mr Lindsay and the Appellant, via a Polish interpreter, I indicated that I would reserve my decision and provide that in writing which I now turn to do.

DISCUSSION

Ground two: Analysis under Section 117C

14. I begin with the second of the Respondent's grounds as that appeared to me to disclose obvious errors in the Decision. Those errors might not necessarily be material to the outcome, but they are nonetheless errors which are evident on the face of the Decision.

15. As Judge Thapar noted when refusing permission, the key findings in relation to Section 117C are at [26] to [33] of the Decision. Those paragraphs read as follows:

> "26. It is important to note that the concept of undue harshness has to be assessed in the context of all the facts of the case taking into account the seriousness of the offending as well as the strength of ties in the UK. What would be unduly harsh for this Appellant's child, might not be unduly harsh for the child or partner of a convicted murderer all other things being equal. Having said the above I am bound to approach harshness in line with the reasoning in HA (Iraq) at paragraph 42;
>
> > 'the level of harshness which is 'acceptable' or 'justifiable' in the context of the public interest in the deportation of foreign criminals involves an 'elevated' threshold or standard. It further recognises that 'unduly' raises that elevated standard 'still higher' – i.e. it involves a highly elevated threshold or standard. As Underhill LJ observed at para 52, it is nevertheless not as high as that set by the 'very compelling circumstances' test in section 117C (6)'
>
> 27. Whilst I do not seek to diminish the seriousness of offending which has resulted in a sentence of 36 weeks in prison, the sentence is still significantly less than is often seen in deportation matters and that must be relevant to the level of harshness which would be 'undue' in

respect of either the Appellant's partner or his child. Also as is noted above I do not have any details of the offending beyond the length of the sentence and the headline charges. It is difficult for the tribunal to attach appropriate weight to a conviction without having proper information about the offence and the Respondent must bear responsibility for the failure to adduce evidence as to that particularly given that Mr McRae did not seek to question the Appellant about the factual circumstances of any of the offences.

28. I have considered the likeliness [sic] of whether or not the Appellant will offend again. There is no formal evidence before me from probation or other similar agencies, however it was accepted by the Respondent that the Appellant's offending was driven by alcohol use. The Appellant has on his evidence had implants in the past to stopping drinking alcohol. These apparently worked for him in the past and he says he is considering getting another one implanted. More significant is the fact that the Appellant has not on the face of it not drunk alcohol or offended [sic] since his release from prison four months ago. The Appellant's partner said that going to prison had been a real wake-up call for him and he had become more aware of what he could lose. I accept on the balance of probabilities that at the moment he is not drinking alcohol, but I cannot exclude the possibility of traumatic events in the future leading to him drinking again. I note that he attributed the final offending to his having started to drink again following the death of his father. I find that there is a risk of there being similar offending in the future.

29. Looking at the Appellant's partner she has lived continuously in the UK since July 2008 just after she had turned 18. She has now been living in the UK for over 14 years. She has acquired a permanent right of residence and indefinite leave to remain in her own right. She has made a home for herself with the Appellant, and they have been living in their current home since 2017. She only works part-time at the moment because they only have 2 ½ days worth of nursery hours for their daughter but that makes for a significant private life in the UK. She has spent the entirety of her adult working life here. I find that it would be harsh to expect her to give up the life she has built in the UK for herself and her family. I also find that it would be harsh for her to remain living in the UK as a single parent separated from the Appellant.

30. The Appellant's daughter is British by birth. Save for the time in which the Appellant was in prison she has lived with him for her entire life. I have seen evidence that she is in nursery in the UK and will be in school shortly. The Appellant's partner admitted that her daughter probably could adapt to life in Poland given how young she is but asked why they should do that given the strength of connections they have built in the UK. It would be inevitable that there would be a period of adjustment for the daughter moving to Poland and problems of integrating at the start of her education and most significantly it would deprive her of the benefits of her British citizenship. I find that just reaches the threshold of being a harsh consequence. I find that it would be a harsh consequence for the daughter to be expected to live in the UK without her father who is on the evidence before me an active and involved parent.

31. Having found that there would be harsh consequences it is for me to consider next whether the threshold of that harshness becoming 'undue' is met. Considering the circumstances of this case

> in the round, whilst I am satisfied that the Appellant is technically a foreign criminal for the purposes of the statute as a persistent offender, I find that he only just meet [sic] that definition and that there does appear to have been a breach in the offending pattern in which there had been a bad period over six months from December 2021 to June 2022. I accept that he has only been out of prison for four months but that still represents a break in the offending.
>
> 32. I must also take some account of the Appellant's length of lawful residence in the UK and attach some weight to the rights of residence he has built up lawfully in the UK prior to the most recent convictions.
>
> 33. Given the strength of the Appellant's partner's ties to the UK and the extent to which she has built a life for herself here I do find that it would be unduly harsh to expect her to leave the UK to return to Poland with the Appellant because the strength of public interest in his deportation is less than it would be in most cases concerning foreign criminals. I also find it would be unduly harsh to expect her to remain in the UK without him given that they have built a strong family life together and are raising a child together. Whilst the Appellant's daughter's private life is inevitably less strong than her mother's given that she is still very young, she is a British national and weight must be attached to that the rights that are associated with it. Again, because this is a case in which the offending is not as serious as is seen in many deportation cases, I find that the consequences for the Appellant's daughter in being expected to remain in the UK without her father or in moving to Poland with him would also be unduly harsh."

16. Having referred to the two exceptions under Section 117C at [25] of the Decision, the Judge there recorded that the Appellant could not succeed under the first exception based on his private life but that it would be open to him to allow the appeal under the second exception on the basis that the impact of the Appellant's deportation would be unduly harsh for the Appellant's partner and child. Following the reasoning set out above, the Judge then purported to allow the appeal under the second exception ([35]). He concluded that this was "sufficient reason for [him] to determine the appeal in favour of the Appellant".

17. The Respondent's second ground is in essence that the Judge materially misdirected himself in law. Although, as Judge Thapar said when refusing permission, the Judge directed himself to the Supreme Court judgment in <u>HA (Iraq) v Secretary of State for the Home Department</u> [2022] UKSC 22 ("<u>HA (Iraq)</u>") and referred to that case again at [26] of the Decision, I am persuaded that the Respondent's second ground is made out because the approach set out by the Supreme Court in <u>HA (Iraq)</u> was not followed by the Judge. My reasons are as follows.

18. At [26] of the Decision, the Judge suggests that whether deportation would be unduly harsh has to be considered in the context of all the facts including the seriousness of the offending. That is completely contrary to <u>HA (Iraq)</u> and indeed all case-law dating back as far as

KO (Nigeria) and others v Secretary of State for the Home Department [2018] UKSC 53. As is made clear at [47] of the judgment in HA (Iraq), when looking at the two exceptions at Section 117C(4) and Section 117C(5), "[t]he consideration of whether those Exceptions apply is a self-contained exercise governed by their particular terms". Put another way, there is no balance to be conducted between the impact on the Appellant's partner and child and the nature and seriousness of the Appellant's offending.

19. It may be suggested that the Judge recognises this in his citation from HA (Iraq) at [26] of the Decision. That is a citation taken from MK (Sierra Leone) v Secretary of State for the Home Department [2015] UKUT 223 ("MK (Sierra Leone)"). That was a correct self-direction as to the threshold which applies but does not overcome the prior reference to the need to balance the impact against the offending.

20. So much is clear from the Judge's approach which follows. The Judge again, wrongly, refers at [27] of the Decision to the level of sentence and seriousness of the offence which he says "must be relevant to the level of harshness which would be 'undue' in respect of either the Appellant's partner or his child". That is legally incorrect. It is a very clear misdirection for the reasons set out above.

21. The Judge then goes on to consider the nature of the offending and likelihood of reoffending before embarking on a consideration of the impact of deportation on the Appellant's partner and child. It is worthy of note that he finds that deportation would have a harsh impact on both but does not say that the impact would be unduly harsh and therefore one which, taken alone, would reach the threshold set out in MK (Sierra Leone).

22. At [31] of the Decision, when considering whether the harshness reaches the level of undue harshness, the Judge finds that it is unduly harsh only because of the "circumstances of this case in the round" and in particular the level and seriousness of the Appellant's offending. That approach as I have already pointed out, runs contrary to HA (Iraq). The Judge wrongly self-directed himself at the outset and thereafter approached the case on the wrong legal basis.

23. Finally, as Mr Lindsay points out, the error is also evident at [33] of the Decision where the Judge, in reaching his conclusion, refers again to the offending being "not as serious as is seen in many deportation cases". That is and was irrelevant to the issue whether deportation of the Appellant would be unduly harsh for his partner and child.

24. As I pointed out to Mr Lindsay at the outset, those errors of approach and the conclusion reached that the second exception was met

might not be material to the outcome if the Judge could have reached the same conclusion when considering the case under Section 117C (6). Mr Lindsay submitted that the errors were material. The outcome might have been different.

25. I observe first that the Judge clearly was not intending to conduct a balancing exercise under Section 117C (6) as is evident from his reference to the second exception at [26] of the Decision and his conclusion at [35] of the Decision that the second exception is met.

26. However, as the Supreme Court also pointed out at [47] of the judgment in HA (Iraq), where the exceptions are not met either because they do not apply (in the case of a serious offender) or because they are not met (for a medium offender), the Tribunal still has to go on to carry out "a full proportionality assessment … weighing the interference with the article 8 rights of the potential deportee and his family against the public interest in his deportation". That exercise is not dissimilar to that carried out at [26] to [33] of the Decision.

27. However, I accept that the error made cannot be immaterial for two reasons. First, the first issue for the Tribunal is whether either exception is met. The Judge purported to consider that but has adopted an impermissible legal approach to that question. That is the starting point prior to the full proportionality assessment. Does the Appellant's deportation have an impact which reaches the very high threshold set out in MK (Sierra Leone) taken alone and with no reference to the nature and seriousness of the offence? The Judge has not considered that question.

28. Second, the test which applies under Section 117C (6) is whether there are very compelling circumstances over and above the two exceptions. It is not a simple balance of interference against public interest with no direction as to the threshold which applies. That is explained by the Supreme Court at [48] to [51] of the judgment in HA (Iraq). The Judge's purported assessment under Section 117C (5) cannot simply be transposed over to a proper balancing assessment under Section 117C (6) with no further self-direction as to the threshold which applies.

29. For those reasons, I am satisfied that there are errors of law made by the Judge in his legal self-directions and the approach he adopted when purporting to apply the law to the facts of this case. Those errors may make a difference in the outcome and for that reason are sufficient to require the setting aside of [24] onwards of the Decision, the conclusion reached in relation to the human rights grounds and the outcome in that regard. Since the Judge did not consider any ground of appeal relating to the Withdrawal Agreement and did not allow the appeal on that basis, it follows that I set aside the allowing of the Appellant's appeal.

30. Mr Lindsay also submitted that the errors made at [24] onwards of the Decision were material because of the Judge's approach to the seriousness of the offending. That is the subject of the first ground to which I now turn.

Ground one: Material Misdirection as to the Public Interest

31. The Respondent submits that the Judge, when determining that the Appellant had not committed an offence which caused serious harm, had failed to have regard to relevant factors, in particular the nature of the victims (emergency workers), "his perpetual offending behaviour", the motivation (alcohol abuse) and escalation. It is also said that the Appellant has failed to show any remorse or show that he is taking steps to address his behaviour long term.

32. As the Respondent points out, the Judge accepted that the Appellant is a persistent offender and therefore the Judge's finding that the Appellant is not also or in the alternative an offender who has caused serious harm has no impact on the Section 117C analysis. Whichever of the provisions applies under Section 117D(2)(c), the Appellant is still to be classed as a "foreign criminal" for the purposes of Section 117C. The same approach therefore applies.

33. The Judge deals with the question whether the Appellant has committed offences which have caused serious harm at [21] of the Decision as follows:

> "Paragraph 8 of the Respondent's review further asserts that the Appellant has been convicted of an offence which 'has caused serious harm'. However, there is a distinction between a serious offence and an offence which causes serious harm. I have not been told what harm has been caused by the Appellant offending. The Respondent has introduced no evidence as to the circumstances of the offences or any injuries or damage caused by the Appellant on any occasion. The presenting officer asked no questions about the facts of the offences. It is not sufficient for the Respondent to rely simply on the nature of any offence of which the Appellant has been convicted or the sentence imposed in seeking to establish that the offence has caused serious harm as required under 117D(2)(c)(ii). There is simply no evidence before me as to any serious harm caused by the Appellant's offending. I therefore find that the Respondent has failed to demonstrate that the Appellant has been convicted in respect of an offence which has caused serious harm."

34. Mr Lindsay referred me to the case of R (oao Mahmood) v Upper Tribunal and Secretary of State for the Home Department [2020] EWCA Civ 717 ("Mahmood"). Mr Lindsay accepted that this judgment was not referred to in the Respondent's grounds. Nevertheless, it was referred to by Judge Macleman when granting permission and I accept that it is appropriate to have regard to it.

35. At [51] of the judgment in Mahmood, the Court of Appeal said this:

> "Mr Biggs argued that the Secretary of State must prove the case against the offender by adducing specific items of evidence that would include, if the seriousness of the harm were in issue, evidence from the victim. We see no proper basis for this argument. In many cases, a victim statement will be put before the sentencing judge. This will describe the impact caused by the offence as at the date of the statement. A victim statement adduced in criminal proceedings has the status of evidence which a defendant has an opportunity to challenge before sentence is passed (*R v. Perkins* [2013] 2 Cr. App. R. (S) 72). There is no justification for allowing a second such opportunity in proceedings before the FtT. In cases where the Secretary of State relies on the causing of serious harm alone for treating an offender as a 'foreign criminal', we would expect the sentencing remarks (if available) and the victim statement (if it exists) to form part of the Secretary of State's evidence before the tribunal. However, we recognise that in many cases a victim or those less directly affected by a crime may be reluctant to make a statement as to the harm endured by an offence, and no proper conclusions can be drawn from the lack of such a statement."

36. Mr Lindsay accepted that the Respondent had not provided any evidence in relation to the criminal conviction. As he pointed out, the Appellant's convictions and sentences were dealt with in the Magistrates Court, and I accept there are unlikely for that reason to have been any sentencing remarks. As the Court of Appeal pointed out, a victim impact statement is unlikely to be made in all cases and even less likely I accept in Magistrates Court proceedings.

37. As the Court of Appeal pointed out in Mahmood, whether an offence causes serious harm depends only on the words of the section. The Court of Appeal made the following observations about the way in which that section applies in general terms:

> "39. So far as the word 'caused' is concerned, the harm must plainly be causatively linked to the offence. In the case of an offence of violence, injury will be caused to the immediate victim and possibly others. However, what matters is the harm caused by the particular offence. The prevalence of (even minor) offending may cause serious harm to society, but that does not mean that an individual offence considered in isolation has done so. Shoplifting, for example, may be a significant social problem, causing serious economic harm and distress to the owner of a modest corner shop; and a thief who steals a single item of low value may contribute to that harm, but it cannot realistically be said that such a thief caused serious harm himself, either to the owner or to society in general. Beyond this, we are doubtful that a more general analysis of how the law approaches causation in other fields is helpful.
> 40. As to 'harm', often it will be clear from the nature of the offence that harm has been caused. Assault Occasioning Actual Bodily Harm

> under s.47 of the Offences Against the Person Act 1861 is an obvious example.
> 41. Mr Biggs argued on behalf of Mahmood that the harm must be physical or psychological harm to an identifiable individual that is identifiable and quantifiable. We see no good reason for interpreting the provision in this way. The criminal law is designed to prevent harm that may include psychological, emotional or economic harm. Nor is there good reason to suppose a statutory intent to limit the harm to an individual. Some crimes, for example, supplying class A drugs, money laundering, possession of firearms, cybercrimes, perjury and perverting the course of public justice may cause societal harm. In most cases the nature of the harm will be apparent from the nature of the offence itself, the sentencing remarks or from victim statements. However, we agree with Mr Biggs, at least to this extent: harm in this context does not include the potential for harm or an intention to do harm. Where there is a conviction for a serious attempt offence, it is likely that the sentence will be more than 12 months.
> 42. The adjective 'serious' qualifies the extent of the harm; but provides no precise criteria. It is implicit that an evaluative judgment has to be made in the light of the facts and circumstances of the offending. There can be no general and all-embracing test of seriousness. In some cases, it will be a straightforward evaluation and will not need specific evidence of the extent of the harm; but in every case, it will be for the tribunal to evaluate the extent of the harm on the basis of the evidence that is available and drawing common sense conclusions."

38. As that passage makes clear, it is for the Tribunal to determine whether an offence has caused serious harm having regard to the evidence before it. As the Court of Appeal said at [56] of its judgment, provided that the Tribunal has taken into account all relevant factors and has not taken into account immaterial ones, there can be no error in its finding.

39. If the Judge had relied only upon the lack of documentary evidence from the criminal courts for his finding, I would have found in the Respondent's favour on this ground. However, as the Judge also pointed out, it was open to the Respondent to cross-examine the Appellant about his offences. Her representative did not do so. The Judge was entitled to draw the distinction he did between a serious offence and one which causes serious harm. The Respondent's grounds elide the two. The Judge did not have evidence as to the harm caused beyond the fact that the offences were ones of violence. He was entitled to find that he did not have sufficient evidence that the harm caused was serious.

40. The Respondent's first ground is therefore not made out. However, I must still consider whether to preserve the findings made. Mr Lindsay invited me, if I found an error on the first ground, to set aside the Judge's finding as to whether the offences had caused serious harm but preserve the finding that the Appellant is a

persistent offender. Whilst I accept that the Appellant has not cross-appealed against that finding, he is in person and might not realise that he should do so if he disagreed with it.

41. Even if I find, as I have done, that the Judge's findings on both these matters were open to him for the reasons he gave, it does not follow that I should preserve either or both findings. Having considered the matter, carefully, I have concluded that the fairest course is to set aside both findings. In that way, the Respondent may if she so wishes provide evidence about the circumstances of the offences or may wish to cross-examine the Appellant about them. The issue in relation to persistence of offending is whether the Appellant "is" a persistent offender. That is best considered at the time of the next hearing.

42. Finally, I observe that, following Mr Lindsay's submissions, I invited the Appellant to say whatever he wished in response, mindful of the fact that the submissions made related to the law and that he was in person. The Appellant made submissions about the unfairness of the Respondent's challenge to the Decision, that he was still on bail and subject to reporting conditions (which will continue in light of my conclusion) which was impacting on his ability to work and that he felt that he was being unfairly punished twice for his crimes. I intend no disrespect to the Appellant by not setting out his submissions in full. They are more relevant to the next hearing when I will redetermine the appeal.

43. I have given directions below in preparation for the next hearing. The Appellant will note that the Tribunal does not have any of the documents which he may have placed before the First-tier Tribunal. If he did produce a bundle for that hearing, he will need to send a further copy to this Tribunal. If he wishes to provide any updated evidence, it is open to him to do so. I have also given the Respondent the opportunity to provide further evidence if she is able in relation to the Appellant's offences.

NOTICE OF DECISION

The Decision of First-tier Tribunal Judge Seelhoff promulgated on 25 April 2023 involves the making of errors of law. Those errors may impact on the outcome and are therefore material. I set aside the Decision. I do not preserve any findings. I make the following directions for the rehearing of this appeal:

DIRECTIONS

1. **Within 28 days from the date when this decision is sent, the Appellant and Respondent shall file with the Tribunal and serve on the other party any further evidence on which they rely. In the case of the Appellant, he must also file and serve any evidence which he had previously submitted to the First-tier**

Tribunal for the hearing before Judge Seelhoff as this Tribunal does not have that evidence.

2. **The re-hearing of this appeal is to be listed before me for a face-to-face hearing on the first available date after six weeks from the date when this decision is sent, time estimate ½ day. A Polish interpreter is required for that hearing.**

L K Smith

Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

31 July 2023