Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00218/2013

THE IMMIGRATION ACTS

Heard at Manchester	**Determination Promulgated**
On 6 September 2013	**On 1 October 2013**
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Before

UPPER TRIBUNAL JUDGE DAWSON
DEPUTY UPPER TRIBUNAL JUDGE HARRIS

Between

EMIL DAMIAN BEJLIK

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: S Wawrzynczak, Legal Representative
For the Respondent: G Harrison, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by the SSHD against the decision of the FtT (the panel) who allowed the appeal by the claimant (as we shall describe him) against the decision to remove him to his country of nationality, Poland where he was born 10 August 1989.

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2. That decision was made under the Immigration (European Economic Area) Regulations 2006 on 23 January 2013 which followed the claimant's conviction on 17 September 2012 at Bolton Crown Court of two offences of robbery for which he was sentenced to one year and 16 months imprisonment.

3. The circumstances of the offences were that, with another, the claimant snatched or attempted to snatch an iPod from a female as she returned alone from work in the Bury town centre at 10 30 pm. She fought back and retained her iPod. Her hand which had a piercing was ripped in the struggle. The claimant and his accomplice (who is also from Poland) then went to another part of the town centre where they attempted to snatch a mobile phone from a 16 year old male who was also walking alone after asking him the time.

4. The sentence reflected the claimant having pleaded at the very first opportunity and the claimant having no previous convictions which lead the sentencing judge to describe the offence as out of character. The judge rejected the submission that the claimant was impressionable and naïve but that it was a planned offence. Aggravating factors included there having been more than one offender, the offence was pre-planned, the use of a form of disguise on one of them (a hoodie and peak cap), the offence having been committed at night and both victims being vulnerable. On the positive side the judge found there was minimal force, property was not taken and remorse had been demonstrated. Both offenders were intoxicated which the judge described "could" be an aggravating factor.

5. The panel heard evidence from the claimant and his mother at the hearing of the appeal on 18 April 2013 and had before them material that included regarding the claimant's employment history and a probation report.

6. After directing themselves as to the law, the panel reached these conclusions on the evidence:

   (a) The claimant came to the UK in February 2008 as confirmed in his parent's statements and he was registered by the SSHD under the Worker Registration Scheme on 17 June 2008. In order for the claimant to have permanent residence he would need to have continuous residence for 5 years from the earlier of these two dates. At the date of the deportation decision the claimant did not have a right of permanent residence.

   (b) A serious view was taken of the offence however taking account of the view by the SSHD as to the claimant's deportation, the remarks of the sentencing judge and the factors in regulation 21(5) the decision to deport was not justified on the grounds of public policy.

   (c) In reaching this conclusion, the panel took account of the absence of any previous convictions either here or in Poland, his good work record and the offence having been committed when he was under the influence of alcohol when in the company of someone who did not have a good character as observed by the sentencing judge. There was no evidence that he had

previously become intoxicated which had led to any misbehaviour. There was no satisfactory evidence of addiction to alcohol or drugs. It would appear to be a one off incident and the claimant had expressed remorse. The claimant had been a model prisoner and had done all that had been asked of him. The only family he had in Poland was his grand and great grandmothers. On release the claimant would have the support of his family.

7. Permission to appeal was granted on an application that challenged the determination on the basis that the panel erred in failing to give any reasons for their finding's on the risk of re-offending. It had failed to make any findings as to the claimant's alcohol problems, the use of drugs and his lack of responsibility for his alcohol problems. Alcohol had been the main factor in the offence. It was also argued that the tribunal had failed to provide reasons whether he will still associate with negative peers. The claimant's age was not a factor which reduced his culpability. He could readily adapt to life in Poland where he had support.

8. We heard argument from the parties and reserved our determination. In essence Mr Harrison relied on the grounds and by way of response Ms Wawrzynczak defended the decision by restating (or advancing further argument) the arguments that she had made before the FtT. This led to Mr Harrison adopting the same approach and he set out reasons why the decision should have been otherwise.

9. We reminded the parties that we needed to first decide whether the panel had erred in law. Both Mr Harrison and Ms Wawrzynczak accepted that in the event that we decided to set aside and remake the decision we could do so without the need for further argument or evidence.

10. The challenge as acknowledged by Mr Harrison is a reasons one; he did not seek to argue irrationality but that the panel failed to give adequate reasons for finding that the baseline criterion for the removal of the claimant who had not yet acquired a right of permanent residence, had not been met in the light of the role alcohol had played in the offence and its potential to undermine the low risk of reoffending predicted in the probation report.

11. The evidence of the way in which alcohol had been a factor was noted by the sentencing judge. He appears to have considered it had the potential to have been an aggravating factor although he doesn't indicate a settled view. The probation officer noted the claimant's own account of the role alcohol played in his life and he also considered that this was an aspect that needed to be addressed. There is no reason to believe that the officer did not take this into account in deciding the risk of reoffending which he identified as low as to the likelihood of reconviction and of re-offending.

12. The panel too looked at this aspect and reached a conclusion rationally open to them that the evidence that it considered did not establish addiction. There is thus no basis on which it can be said that they ignored this aspect or that they failed to factor it in

deciding any risk that the claimant posed. It was a matter that was raised by the SSHD at the hearing reflected in [19] and addressed in [37].

13. The panel reasons were reached after a correct directed themselves as to the legislative framework they were required to apply under regulation 21 as noted at [21] to [24].

14. Our conclusion is that this appeal boils down to no more than a disagreement with a reasoned conclusion that was properly open to the panel and one that is not infected by error. Accordingly the appeal is dismissed.

Signed Date 30 September 2013

Upper Tribunal Judge Dawson