IAC-FH-AR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00691/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 14 July 2015	**On 22 July 2015**

Before

THE HONOURABLE MR JUSTICE COLLINS
UPPER TRIBUNAL JUDGE LINDSLEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MW
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr L Tarlow, Home Office Presenting Officer
For the Respondent: None

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal given as long ago as 12 September 2014 by which it allowed the respondent's appeal against the decision to deport him; and that decision followed his conviction for a serious offence of causing grievous bodily harm for which he received a sentence of two years and three months' imprisonment.

2. The respondent had, he said, come to this country in 2006 from Poland and had been here ever since. He had produced evidence in the form of various payslips and other documentation from his bank which established that at least since November 2007 he must have been here working full-time. Before the First-tier Tribunal evidence was given by the respondent and his brother, which the Tribunal say was able to fill in the details in respect of the period 2006 to 2008. The Tribunal accepted this witness evidence and also that there were good reasons why the respondent had been unable to produce evidence in the form of any documentation that might have established this earlier period of residence and work because bank records for example, did not go back more than five years.

3. It was suggested in the grounds of appeal that the reasoning by the Tribunal was insufficient to justify the conclusion that the respondent had been here for that period. The importance of that is that if he had been here for five years then he had within the relevant EU Directive a right of permanent residence and that meant that the standard that had to be applied in deportation was one which required the Secretary of State to show serious grounds of public policy or public security to justify his exclusion or removal from the UK. It talks about the security of the state in the Regulation but that includes the security of individuals to be protected from those who might commit crimes, and so if there is a serious criminal offence then that is capable of meaning that an individual can be removed albeit he has the added protection for having been here for more than five years.

4. We find that there are no proper grounds for challenge to the Tribunal's assessment that the appellant had a permanent right of residence. The decision of the First-tier Tribunal is evidenced as set out above, and gives adequate reasons for the conclusion.

5. The question remaining is whether on the facts of this case as found by this Tribunal that its decision was wrong in law in relation to whether the respondent poses a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society in accordance with Regulation 21 of the Immigration (EEA) Regulations 2006.

6. Clearly the Tribunal formed a very favourable view of the respondent when he gave evidence before it. The offence in question was a very nasty one. The circumstances briefly were that he and a colleague had gone out drinking together, and had had on the face of it an enormous amount to drink. When they returned home it seemed that they were for whatever reason unable to get in and so they knocked on a neighbour's door and got him to let them in there. There then took place this very serious assault on the unfortunate man, no doubt because of the drink that they had consumed.

7. The respondent asserted that the neighbour had started any violence but the response of the pair of them was to attack him in such a way as caused him very serious head injuries, facial cuts, fractured cheekbone,

broken nose, loss of consciousness and the requirement of surgery under general anaesthetic. The respondent was charged with causing grievous bodily harm with intent but for reasons which seemed good to the CPS and which were accepted by the trial judge the plea was accepted to grievous bodily harm contrary to section 20 of the 1861 Act. This meant that there was no question of an intent to cause grievous bodily harm, merely that this incident occurred, as it were, on the spur of the moment resulting from the drunken state of the respondent and his colleague. This lack of pre-meditation is appreciated by the First-tier Tribunal at paragraph 43 of the decision.

8. Before the First-tier Tribunal the respondent expressed remorse and asserted that he had not drunk alcohol since release from prison. That the Tribunal accepted. So far as risk of harm is concerned the Secretary of State has relied particularly on the NOMS report which indicated that in the view of the author there was a medium risk of harm to known adults and public in the community but a low risk of harm to children, staff and prisoners, and a low risk of re-offending.

9. The First-tier Tribunal is criticised in the grounds of appeal for not giving proper reasons, and for not relying on the medium risk of harm. However it is clear that consideration was given explicitly to the matter of medium risk of harm to known adults and public at paragraph 25 of the decision. The Tribunal stated however, that in all the circumstances and no doubt having regard to the view that they had formed of the respondent combined with the evidence of the low re-offending risk as set out in the NOMS report before them, that there was a low risk of reoffending and there was nothing to suggest that the respondent's personal conduct represented a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, thus applying the correct test under Regulation 21 of the Immigration (EEA) Regulations 2006.

10. It seems to us that whether or not we would have reached the same decision it cannot conceivably be said that there was any error of law in the approach adopted by the First-tier Tribunal. They made a proper and balance evaluation of the respondent's criminal record which they noted as consisting of an extremely serious but unpremeditated offence; they indicate that they accepted the evidence they found credible given by the respondent both as to his remorse and intention to avoid any further offending; they gave proper consideration to the NOMS report; and concluded in those circumstances he would not be a sufficient risk to justify his deportation following the relevant Regulations.

11. In those circumstances this appeal is dismissed.

Notice of Decision

1. The appeal is dismissed as the grounds do not disclose errors of law by the First-tier Tribunal.
2. The decision of the First-tier Tribunal allowing the appeal is upheld.

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

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

Signed Date 21st July 2015

pp Mr Justice Collins