



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DA/00134/2015

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke-on-Trent  
On 28<sup>th</sup> January 2016

Decision & Reasons Promulgated  
On 30<sup>th</sup> March 2016

Before

MR C M G OCKELTON, VICE PRESIDENT  
UPPER TRIBUNAL JUDGE MARTIN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

R K

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr T Wilding (Senior Home Office Presenting Officer)

For the Respondent: Not present or represented

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Secretary of State, with permission, against the determination of First-tier Tribunal Judge Colyer promulgated on 3rd July 2015 in which he allowed the Appellant's appeal against the Secretary of State's decision to deport him to Poland under the EEA Regulations taken on 30<sup>th</sup> April 2015. The Judge allowed the appeal under the EEA Regulations and on Article 8 grounds.
2. For the sake of continuity we shall continue to refer to RK as the Appellant and the Secretary of State as the Respondent in this decision.

3. The Appellant was born on 27<sup>th</sup> May 1976. He entered the UK with his partner, also Polish in August 2012. He worked in a turkey factory until he was arrested in February 2015. He remained in custody until he was removed to Poland on 14<sup>th</sup> July 2015, the day before his appeal before the First-tier Tribunal.
4. The Appellant's wife worked until she ceased due to pregnancy. Their daughter was born on 6<sup>th</sup> November 2013.
5. After the Appellant was detained his parents travelled from Poland to assist his partner in the care of the child so that she could work. They live together in a council house in the Appellant's partner's name. She is in employment supporting the family.
6. The Secretary of State's decision to deport the Appellant followed his conviction on 20<sup>th</sup> February 2015 at South Derbyshire Magistrates Court on two counts of burglary and theft. He had previously been convicted in the UK on 15<sup>th</sup> July 2013, also at South Derbyshire Magistrate's Court, of handling stolen goods. On that occasion he was fined and ordered to pay costs.
7. The Appellant also has a considerable number of convictions in Poland as follows:-
  - a. 10<sup>th</sup> February 2004 - 3 counts of burglary and 1 of theft - 2 years and 5 months imprisonment.
  - b. 14<sup>th</sup> April 2005 - possession of narcotic drugs or psychotropic substances - 30 hours unpaid work - amended on 6<sup>th</sup> July 2007 to 6 months imprisonment
  - c. 28<sup>th</sup> September 2005 - theft - 10 months imprisonment suspended for 3 years - activated on 17<sup>th</sup> September 2007 and imprisoned for 10 months.
  - d. 8<sup>th</sup> January 2007 - burglary - 1 years imprisonment suspended for 3 years.
  - e. 30<sup>th</sup> May 2007 - illegal deprivation of liberty - 1 year imprisonment suspended for 3 years - activated on 20 August 2009 and imprisoned for 1 year.
  - f. 1<sup>st</sup> August 2007 - dealing in stolen goods - 18 months imprisonment.
  - g. 14<sup>th</sup> October 2008 - causing bodily impairment of medium severity, insulting a public official - 2 years imprisonment suspended, a supervision order and to comply with probation measures and to refrain from alcohol abuse.
  - h. 17<sup>th</sup> December 2009 - brawl and battery - 2 years imprisonment suspended for 5 years - activated on 2<sup>nd</sup> August 2013 and imprisoned for 2 years.
  - i. 11<sup>th</sup> September 2012 - theft - 17 months imprisonment.

8. The First-tier Tribunal did not hear evidence from the Appellant as he had been removed the previous day. The Tribunal did however hear from his partner and his parents. His parents came to the UK in order to help their "daughter-in-law" with the care of the child so that she could continue to work after the Appellant was imprisoned.
9. The Judge noted at paragraph 29 of his Decision and Reasons that confirmation of the Appellant's criminal convictions in Poland were set out in the notification from UK Central Authority for Exchange of Criminal Records issued in response to a request from the Derbyshire Constabulary on 27th August 2014 which showed the nine convictions listed above.
10. At paragraph 30 the Judge noted that he had not been provided with any further details of those offences such as police/prosecution summaries, pre-sentence reports, sentencing remarks or subsequent probation reports. He noted that he had no professional assessment of the Appellant's risk of harm or reoffending in Poland or of criminal offending in the UK.
11. At paragraph 31 the Judge noted that he had been provided with no official record of the outcome of the proceedings at Derby Crown Court but was told by the Appellant's partner that he had been sentenced to 8 months imprisonment suspended for two years.
12. The Judge then noted at paragraph 51 once again that he had no details of the various offences in Poland and at paragraph 52 he found that there was no clear pattern of serious offending by the Appellant in Poland or any other State and that he had not indulged in crimes that may endanger the general public or the economic well-being of the UK. He then found at paragraph 59 that it had not been established that the Appellant's criminal conduct is such that he poses such a threat to public security and/or public policy that his deportation was required.
13. So far as his decision under Article 8 is concerned the First-tier Tribunal Judge found at paragraph 84 that the Appellant had established private and family life in the United Kingdom such that Article 8 was engaged and then went on to consider proportionality. At paragraph 72, when considering the best interests of the child, he concluded that the best interests of the child were to be cared for by both parents and that it was not reasonable to require the child to move to Poland where the family had no assets, employment or support. He concluded at paragraph 92 that the proposed deportation would be disproportionate when considering all matters in the round. He found "*in particular as a result of his arrest, caution; immigration detention and these proceedings the Appellant is now aware of the consequences of crime*". In addition he found that "*he is now aware of the prospect of deportation and these combine to ensure that the Appellant could be expected not to engage in further criminal activities.*" Having come to that conclusion the Judge found that "*the ultimate aim of justification of the interference had not been made out*".

14. At paragraph 93 the Judge found that the Secretary of State had not established that the Appellant's past criminal actions were so serious that she was able to justify the decision to deport him. He took note of the public interest issues but found that "*in this particular case the Appellant's personal circumstances were such as to outweigh deportation factors when considering the proportionality of the Respondent's decision*".
15. Finally at paragraph 94 the Judge found that deportation would not be proportionate to the legitimate aim pursued by the Respondent. He allowed the appeal both under the EEA regulations and on human rights grounds.
16. The Secretary of State was granted permission to appeal having lodged fairly lengthy grounds which can however be summarised as an assertion that the First-tier Tribunal's findings and conclusions were bordering on irrational or perverse given the Appellant's criminal record in Poland and offending during the short time that he had been in the United Kingdom.
17. We agree with the Secretary of State's submission that the findings were perverse in light of the evidence before the First-tier Tribunal. It was immaterial that the First-tier Tribunal did not have more details of the offences in Poland. The Judge had more than sufficient evidence to establish that the Appellant was a serial offender in Poland and that his offending was sufficiently serious on almost each and every occasion to warrant custodial sentences being imposed. He clearly did not observe the terms of his various suspended sentences as most were subsequently activated. It is not true to say that there was no pattern of offending. The offences are for dishonesty and violence including burglary. It is of particular note that his offending in the United Kingdom was of handling stolen goods and burglary which followed the same pattern as his offending in Poland. It is also very significant that since 2004 he barely spent any time at large in Poland without offending and he was in the United Kingdom only a very short time before he was convicted of an offence. Having arrived in March 2012 he was convicted in July 2013. The criminal record was not challenged.
18. Having found that the Judge's findings were perverse we set aside his decision in its entirety and we redecide the appeal.
19. The Appellant's partner attended the hearing before us. Regrettably due to an administrative error by the Tribunal, an interpreter was not available. However, she agreed to proceed without the use of an interpreter and was able to give clear evidence. Her evidence was confined to Article 8 matters. She told us that she had been working in the UK until she was obliged to cease because of her pregnancy and she has been working since the Appellant was detained with the assistance of her parents in law who provide childcare. She told us that as soon as the Appellant was deported to Poland he was imprisoned by the Polish authorities and he remains detained today. She confirmed that he had committed a number of offences and had convictions both before and after she had met him.
20. She told us she lives in a house rented from the council in the UK with her parents in law and her daughter Nicola. She has no intention of returning to Poland as she would

not be able to work because she would not have childcare. Working in Poland would not provide the standard of living for her daughter that employment in the UK does. Her own parents are alcoholics and unsuitable to care for her daughter. Her daughter is her primary concern and she will remain in the UK irrespective of where the appellant is. She told us that the Appellant's parents will not return to Poland either but will remain with her.

21. Under the Immigration (EEA) Regulations 2006 the Secretary of State is entitled to deport an EEA national under Regulation 19(3) if the Secretary of State has decided that the person's removal is justified on the grounds of public policy, public security or public health in accordance with Regulation 21.
22. The Appellant in this case, not having acquired permanent residence in the UK or been in the UK for 10 years is afforded the minimum level of protection, namely that the decision must be taken on the grounds of public policy, public health or public security and in compliance with the principles set out in Regulation 21(5). That Regulation requires that the decision :-
  - a. must comply with the principle of proportionality
  - b. must be based exclusively on the personal conduct of the person concerned;
  - c. the personal conduct of the person concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society;
  - d. matters isolated from particulars of the case or which relate to considerations of general prevention do not justify the decision;
  - e. a person's previous criminal convictions do not in themselves justify the decision.
23. Additionally, Regulation 21(6) provides that before taking a relevant decision on the grounds of public policy or public security in relation to a person who is resident in the United Kingdom the decision maker must take account of considerations such as age, state of health, family and economic situation of the person, the person's length of residence in the United Kingdom, the personal social and cultural integration into the United Kingdom and the extent of the person's links with his country of origin.
24. In this case we find that the Appellant clearly represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. This is not purely based on his past offending. It is based rather on the fact that his life since 2004 has been categorised by offending which despite repeated opportunities by way of suspended sentences he has failed to stop. He continued his offending behaviour in Poland until shortly before he came to the UK. He had been in the UK only a short time before he committed similar offences here and we have no hesitation in finding that if he were to remain in the UK the pattern would continue and he would commit further offences. It is in the interests of public security to be protected from crime.

25. Having heard from the Appellant's partner it is clear that his presence in this country is not necessary for her to continue to exercise Treaty rights in the UK as she has continued to do so since his detention in February 2015 and she has made clear that she will continue to remain working in the UK with the assistance of her "parents-in-law" notwithstanding his absence.
26. So far as ties to Poland are concerned, we are not satisfied that the Appellant's ties to Poland have ceased given the very short period of time he was in the UK.
27. In conclusion we find it entirely proportionate that this Appellant be deported from the UK on the grounds of public policy and, public security. For the same reasons we find it entirely proportionate and appropriate for him to be deported under the EEA regulations his deportation is not a disproportionate breach of his right to a private and family life as protected by Article 8 of the ECHR. Given his partner's attitude and the infancy of his daughter when he was detained we do not find that the latter's best interests require his presence. If the future for this Appellant continues as in the past, is highly likely, he would be an intermittent presence in the lives of his family due to spending so much time in detention.
28. The Secretary of State's appeal to the Upper Tribunal is allowed. The Appellant's original appeal against the decision to deport him is dismissed.
29. As the Appellant's partner, daughter and parents are innocent of any wrongdoing and remain in the UK we have decided it is appropriate to make an anonymity direction.

Signed

Dated 11<sup>th</sup> March 2016

**Upper Tribunal Judge Martin**

**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. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 11<sup>th</sup> March 2016

Upper Tribunal Judge Martin