



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00202/2017

THE IMMIGRATION ACTS

Heard at Glasgow
On 9 May 2018

Decision & Reasons Promulgated
On 16 May 2018

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ROBERT [L]

Respondent

Representation:

For the Appellant; Mr A Govan, Senior Home Office Presenting Officer
Respondent present; no representative

DETERMINATION AND REASONS

1. The SSHD is the appellant in the UT, but the rest of this decision refers to parties as they were in the FtT.
2. The SSHD decided to deport the appellant under the Immigration (EEA) Regulations 2016 for reasons explained in her letter dated 31 March 2017.
3. It was not accepted that the applicant had acquired a right of permanent residence based on residence in accordance with the regulations for a continuous period of 5

years, under regulation 15. The criterion applied was therefore “grounds of public policy or public security” (regulation 27; page 4 of the decision).

4. The SSHD noted 11 convictions for 23 offences from 5 November 2012 to 16 November 2016, set out at pp. 1 – 2 of the decision. She found that the applicant had anti-social attitudes for which he took little responsibility, and was likely to offend further. At p. 6 she said that he represented a genuine, present and sufficiently serious threat to the public to justify deportation, and that even if he had 5 years continuous residence, the requirement for serious grounds of public policy would be satisfied.
5. In a further decision, dated 26 April 2017, the respondent accepted that the appellant had acquired a right of permanent residence, but held that the decision remained justified on serious grounds of public policy and public security (regulation 27 (3)). The respondent declined to accept that he had continuous residence for 10 years prior to the decision dated 31 March 2017, so as to qualify for the threshold of imperative grounds of public security (regulation 27 (4)). This was because residence for purposes of the regulations was broken by periods of imprisonment; lack of evidence for certain periods; and discontinuity of employment. The decision further states that the appellant would not meet the “integration test” of the Free Movement Directive and case law.
6. (This decision is somewhat obscure. Its references to authority are incomplete. The authority on imprisonment interrupting continuity of residence counting towards 10 years is *Warsame v SSHD* [2016] EWCA Civ 16. That case is on the 2006 Regulations, but the relevant provisions are identical.)
7. FtT Judge Cas O’Garro allowed the appellant’s appeal by a decision promulgated on 5 July 2017.
8. By a decision dated 5 October 2017, which should be read with this decision, UT Judge Kopieczek set aside the decision of the FtT and directed a further hearing in the UT for its remaking.
9. The appellant was released on immigration bail in December 2017.
10. A transfer order was made to enable the hearing to be completed by another UT Judge.
11. Following various procedure, the hearing for the purposes of remaking the decision took place on 9 May 2018.
12. There are some documents, both loose and partly in bundles, on file from previous procedure, during parts of which the appellant had representation. The papers are not in good order. Neither Mr Govan nor the appellant made any reference to the documents, apart from Mr Govan relying on the decision letter. The bundles include various social work and medical histories and reports. The most recent report, dated 25 November 2016, considers the appellant to represent a moderate risk of reoffending.

13. I take the basic background from the papers on file and from information the appellant provided at the hearing. The appellant is a citizen of Poland, born on 17 February 1968. He came to Scotland with his former wife and their son, [K] (born on [] 2002) in 2006. He is divorced from his wife but on good terms with her. She and [K] live in Coatbridge, not far from where he lives in Airdrie. [K] attends school in Coatbridge. The appellant sees him regularly, spending most of a day with him at the weekend. They are in telephone contact daily. He is not in any relationship with a partner. He has an adult daughter in Poland, and a sister. He lives with a friend who is not in good health and to whom he provides assistance in exchange for his keep. He has no income. He has worked in the past but not recently. He has had no contact with the police and has not been in court since the last conviction relied upon by the SSHD. All his offending related to his relationship with his former partner, now deceased, who had serious problems with alcohol and with drugs, which led to her death. He has had serious alcohol problems for many years. There are reports in the documents of periods of very high consumption but also of periods of low consumption or even abstinence over periods of weeks or months. The appellant said at the hearing that he is “not drinking at the moment” but “sometimes I have a beer”. He is not on any regime of treatment for alcoholism at present.
14. When questioned by Mr Govan, the appellant said of his drinking that “two beers would be tops”. He knows he is an alcoholic. He was dependent at the time of his offending but not now. He is not totally abstaining but is on his way to full recovery. He was due to undertake Antabuse treatment but that did not go ahead because he was imprisoned. While he was with his partner they both drank vodka and cider daily, enough to get “legless drunk”. He was last drunk to that extent two years ago. He lost his partner due to alcohol and it is now “just not an option” for him to drink like that again. He accepted he did not comply with bail conditions requiring him to report weekly. He did not have the money to travel from Airdrie to Glasgow to do so (£7 return). Having once failed to attend, he was afraid to turn up in case he would be detained, leading him back into depression, so he just avoided the whole situation. He accepted that he had no good reason for not telephoning the Home Office to explain that he could not afford to report.
15. Further to relying on the decision letter, Mr Govan submitted thus. The appellant’s offending was all alcohol related. He admitted he was still drinking and not engaged with any agency. It had to be queried whether he was likely to relapse. His criminal history showed persistent non-compliance with bail conditions. His attitude to immigration reporting showed a similar pattern. He had not re-offended, but has been at liberty for only 5 months. Given his history, there was a risk of re-offending and a level of threat to the public which justified his deportation.
16. I reserved my decision.
17. Although it was part of the SSHD’s grounds of appeal to the UT that there was nothing to confirm that the appellant’s former partner was, as he claimed, deceased, I have found on the file (detached from the bundle of which it formed part) a copy of the

certificate of her death on 15 March 2017, caused by (a) bilateral pneumonia and (b) decompensated alcoholic liver disease.

18. The issue is whether the evidence shows that the appellant represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, so as to justify the decision to deport him.
19. The appellant's convictions centred upon domestic abuse within a troubled relationship of mutual addiction to drink, regular involvement with the police and the court, and non-compliance with conditions imposed by the court. It is in the fundamental interests of society to take proceedings to tackle abuse of domestic partners, and that orders of courts are respected. Apart from harm to his former partner, the appellant has been a significant nuisance and cause of public expense.
20. Any ongoing similar threat which the appellant poses affects the fundamental interests of society.
21. The appellant gave evidence of his present circumstances in a straightforward and apparently genuine manner, and was not undermined in cross-examination. However, good intentions are easily expressed. It would be naïve to conclude that there is no risk that he might relapse into alcoholism and anti-social conduct, or that he might never again be involved in an abusive relationship.
22. The absence of engagement with any organisation for help with alcoholism is a negative sign. The appellant said that no ongoing assistance was offered after he left detention, but I consider that NHS, social work and voluntary organisations would be available. The documents show that he has had help from such sources in the past. There is only the appellant's word that he is not drinking at any significant level. Equally, there is only his own admission that he is drinking at all.
23. Apart from one conviction in November 2012, the appellant's convictions are concentrated into the period from May 2015 to December 2016, and are all inter-related. That is an episode of behaviour beginning quite late in his adult life and not foreshadowed by earlier events. The offences were multiple, but all stemmed from the appellant failing to stay away from his partner and the block of flats where she lived. He is no longer in that relationship of mutual near self-destruction. He has at least some insight into how disastrous that period of his life was.
24. The appellant said that he was not presently working but that he could readily find work through an agency if he was no longer subject to deportation. He could work in a factory, as a painter and decorator, or as a scaffolder. That appears consistent with his previous working history. While not drinking to excess, and with regular immigration status, it seems more than likely that the appellant could and would find employment.
25. The appellant summed up his case by expressing his wish to remain near his son. His son was not brought to give evidence, but a letter from him produced earlier in proceedings, and references in the reports, confirm a genuine ongoing relationship.

The appellant is well aware how close he has come to deportation being effected. This is not a guarantee of future good behaviour, but it is a genuinely felt incentive.

26. Although of lesser importance, the appellant also has a network of supportive friends here.
27. No doubt the appellant could readjust without any great difficulty to life in Poland, but surrounding circumstances would not be so beneficial, and ongoing rehabilitation would be somewhat less likely.
28. In the grounds of appeal to the UT, the SSHD took the line that a threat did not have to be imminent, and that a decision might be justified on preventative grounds. I find this case to be on the borderline. On balance, however, I think that the evidence tips towards a finding that under present circumstances, and under circumstances so far as they can be realistically forecast, the risk of re-offending is no longer moderate but is low, and the threat posed by the appellant does not reach the level required by the regulations.
29. The decision of the FtT has already been **set aside**. The following decision is substituted: the appeal, as brought to the FtT, is **allowed**.
30. No anonymity direction has been requested or made.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

10 May 2018
Upper Tribunal Judge Macleman