



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DA/00228/2017

THE IMMIGRATION ACTS

Heard at Field House  
On 21 August 2018

Decision & Reasons Promulgated  
On 07 September 2018

Before

THE HONOURABLE LORD BECKETT  
UPPER TRIBUNAL JUDGE ALLEN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR DOMINIK PIOTR GRZELA  
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer  
For the Respondent: No appearance by or on behalf of the Respondent

DETERMINATION AND REASONS

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal Judge allowing the appeal of Mr Grzela against the Secretary of State's decision of 28 March 2017 making a deportation order under the Immigration (European Economic Area) Regulations 2016.
2. We will refer hereafter to Mr Grzela as the appellant, as he was before the judge, and to the Secretary of State as the respondent, as he was before the judge.
3. The judge noted the appellant's criminal record. He had been convicted of robbery and battery at Snaresbrook Crown Court for which he received two twelve-month

youth rehabilitation orders to run concurrently, two unpaid work requirements of 260 hours and six months electronic monitoring. On 14 January 2015 he was convicted of failing to surrender to custody at the appointed time for which he was fined £100 and also subjected to a victim surcharge of £320. On 18 May 2015 he was convicted of two counts of possession with intent to supply a controlled drug – class B – cannabis, for which he received a £120 victim surcharge and consecutive terms of imprisonment of ten months and fourteen months in a youth offender institute. On 1 December 2015 he was convicted of two counts of possessing a controlled drug with intent to supply for which he received a sentence of six years imprisonment in a youth offenders' institute. He was served with a notice of liability for deportation on 15 June 2015. He did not submit any representations. On 8 August 2015 he was served with a notice of liability for deportation and, he having refused to sign for the document, on 3 April 2017 he was served with a stage 2 letter and deportation order and appeal paperwork.

4. The judge allowed the appeal on the basis that the decision of the Secretary of State was based on the appellant not having acquired permanent residence under Regulation 23(3)(b) of the 2016 Regulations. The appellant appealed, claiming he had acquired permanent residence, and that was accepted by the judge.
5. In fact, as the respondent argued in his grounds of appeal, the decision was made on the basis that the nature of the appellant's offences was such that he was considered to pose a genuine, present and sufficiently serious threat to one of the fundamental interests of UK society, and it was considered that his deportation was justified on grounds of public policy, public security or public health in accordance with Regulation 23(6)(b). The respondent's view was that the decision to deport was proportionate and in accordance with the principles of Regulations 27(5) and (6).
6. There was no appearance by or on behalf of the appellant before us. The Tribunal had been notified of the appellant's address in Poland by his previous representatives at the time when they came off the record. Mr Melvin was able to inform us that the appellant had been removed on 1 July 2017. There had been no application to the respondent for temporary admission to attend the hearing.
7. In light of the fact that we were satisfied that the appellant had been served with notice of the date, time and place of the hearing, we were satisfied that it was appropriate to proceed.
8. We were also satisfied that the judge had clearly erred as a matter of law. The judge wrongly thought that the decision of the respondent was simply refusal to accept that the appellant had acquired permanent residence whereas in fact it was as set out as above. As a consequence of the judge's error, he addressed no more than the evidence going to permanent residence. That was a fundamental error, and in our view clearly amounts to an error of law. We gave thought to the question of whether the matter needed to be remitted to the First-tier Tribunal or could be heard in the Upper Tribunal. In light of the fact that there has been no consideration of the relevant issues as set out in the decision letter, we consider this is a proper case to go back for

consideration in the First-tier Tribunal and accordingly the matter is remitted for a full re-hearing at Taylor House before a judge other than Judge S J Clarke.

No anonymity direction is made.

A handwritten signature in black ink, appearing to be 'Allen', written in a cursive style.

Signed

Date 03 September 2018

Upper Tribunal Judge Allen