



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: DA/00365/2017

THE IMMIGRATION ACTS

**Heard at Glasgow
on 21 March 2018**

**Determination issued
On 23 March 2018**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

IRENEUSZ SOBOTNICKI

Respondent

Representation:

For the Appellant: Mrs M O'Brien, Senior Home Office Presenting Officer

For the Respondent: Mr M Ross, of LKW, Solicitors

DETERMINATION AND REASONS

1. The parties are as described above, but the rest of this decision refers to them as they were in the First-tier Tribunal.
2. The appellant is a citizen of Poland, born on 22 December 1986. The SSHD's letter and decision notice dated 19 June 2017 state that he is to be deported under the Immigration (EEA) Regulations 2016 and advise him of his right of appeal to the FtT under regulation 36 and schedule 2 of the regulations.

3. The appellant filed notice of appeal to the FtT dated 30 June 2017, stating in his grounds simply that the decision breaches his rights “under the community treaties in respect of entry to or residence in the UK”.
4. FtT Judge David C Clapham SSC heard the appeal on 12 October 2017. His decision was promulgated on 29 November 2017. Parties were at odds on whether the appellant had acquired the right of permanent residence under regulation 15 and so subject not simply to “grounds of public policy, public security or public health” under regulation 27 (1) but to “serious grounds of public policy and public security” under regulation 27 (3).
5. The presenting officer submitted that he should be deported even by the higher criterion (paragraphs 28 and 32) while the solicitor for the appellant was said to be unable to make any submission on that basis (paragraph 32). The judge held that permanent residence had been established and expressed disappointment that he had no “proper submissions” on that basis (paragraphs 32, 38 and 41). He then said at paragraph 42:

“... the appellant ... has established permanent residence. Consequently, I am not in a position to uphold the respondent’s decision. It may be of course that once the respondent has reconsidered ... [she] ... will take the view that ... the appellant ... ought still to be deported. However, that is not the basis on which the respondent’s decision appears to have been issued so to that limited extent ... I require to allow the appeal.”
6. The SSHD sought permission to appeal to the UT. At part C of her application, “reasons for appealing”, she advanced two errors of law:
 - (1) the judge incorrectly remitted the appeal to the FtT when he had no power to do so. *Greenwood (No 2)* [2015] UKUT 00629 is cited.
 - (2) Failure to resolve a conflict on a material matter, namely “the appellant’s residence status and whether he poses a genuine, present and sufficiently serious threat to justify deportation”.
7. (The language of ground 2 is excerpted from regulation 27 (5)).
8. FtT Judge Landes granted permission on 10 January 2018, although observing on ground (1) that what the judge did might have been consistent with *Greenwood*. On ground (2), the judge did appear to have made a finding on permanent residence, but arguably should have proceeded to resolve the issue even in absence of detailed submissions.
9. In his skeleton argument, Mr Ross deals with the tests for permission and for error of law, and submits that the decision might stand on the basis of the finding of permanent residency.
10. I indicated that I was satisfied that the decision could not stand.
11. Schedule 2 of the regulations deals with the application of the 2002 Act to appeals under the regulations. Section 84 of the Act applies “as though

the sole permitted grounds of appeal were that the decision breaches the appellant's rights under the EU treaties in respect of entry to or residence in the UK".

12. *Greenwood* is now to be read subject to *Charles* (human rights appeal: scope) [2018] UKUT 00089. However, the intricacies do not affect the plain outcome of this case.
13. The FtT was bound to resolve the ground of appeal before it, and erred in law by failing to do so. Its decision must be **set aside**.
14. The case is **remitted to the FtT** for further decision.
15. Parties agreed that there was no reason to interfere with the findings on permanent residence, and no reason why the case might not come again before Judge Clapham. Further listing is a matter for the FtT.
16. Mr Ross said that the appellant was likely to seek to introduce further evidence. I indicated that any application should be made as soon as possible, and that a decision on it would also be a matter for the FtT.
17. No anonymity direction has been requested or made.



20 March 2018
Upper Tribunal Judge Macleman