



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DA/00487/2017

THE IMMIGRATION ACTS

Heard at Field House  
On 5<sup>th</sup> July 2018

Decision sent to parties on  
On 16<sup>th</sup> August 2018

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MATEUSZ SURA  
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr Paul Duffy, Home Office Presenting Officer  
For the Respondent: Mr Farhad Ansari, Duncan Lewis & Co Solicitors (Harrow Office)

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of First-tier Judge Devittie allowing the appellant's appeal against his decision to make a deportation order against the appellant in accordance with Regulation 23(b) of the 2016 EEA Regulations. The appellant is a national of Poland born on 1<sup>st</sup> September 1992.
2. The index offence was a conviction on 20<sup>th</sup> February 2017 at North London Magistrates' Court on two counts of sexual assault with no penetration and battery, for which the claimant was sentenced to six weeks' imprisonment and required to register on the Sex Offenders Notice for seven years and pay a victims surcharge of £115. He had, while extremely drunk, committed sexual offences against a doctor and

a paramedic while being taken to and when at hospital and he was sentenced without a pre-sentence report.

3. The only relevant evidence before the First-tier Tribunal was the OASys Report of 1 August 2017. This appeal was heard in the First-tier Tribunal on 15 March 2018 by which time the OASys assessment was seven months old. There was and is no updated evidence from the Probation Service following the OASys assessment. The Judge considered the OASys assessment at length in his decision and also the oral evidence which was given by the claimant and his mother and a summary of the evidence can be found at paragraph 8 of the decision.
4. The First-tier Tribunal noted that the offender manager had made observations entirely consistent with the conclusion that the appellant did pose a genuine and sufficiently serious threat to society, but that at the end of the OASys Report in a carefully assessed conclusion (paragraph 8(3)) the same offender manager found that the risk of the appellant reoffending was low and gave reasons for so finding.
5. At paragraph 8(4) the First-tier Tribunal Judge said this:

“8.(4) It is clear therefore that the offender manager has taken into account the fact that the Appellant’s mother had shown active support for him and that this was likely to operate to reduce the risk. Furthermore, the offender manager put in place sessions where the probation officer would address with the Appellant, the causative factors, including his attitudes to women, thinking skills and his alcohol consumption. I do not have any doubt that the offender manager did undertake these sessions with the Appellant. The report indicates that the Appellant was punctual in attending all his appointments with the probation officers and related agencies. This does point to him responding in a positive way to processes that will reduce the risk of reoffending. His mother gave evidence in this hearing, she was very emotional and clearly very supportive of the Appellant. I have no doubt that she will play a role in reducing the risk of him reoffending.”

6. At sub-paragraphs 8(5) and 8(6) of his decision, the First-tier Tribunal Judge noted that a letter from Care UK in October 2017 confirmed that the claimant was addressing his past alcohol abuse, attending all appointments and completing the work to a high standard; that a certificate in September 2017 from the Drug and Alcohol Awareness Services stated that he had successfully completed a course whose objectives were to enable him to consider how the use of alcohol affects others and him, identifying problems with drinking alcohol to excess and thinking about the issues associated with alcohol abuse.
7. The First-tier Tribunal Judge’s decision concluded as follows:-

“(9) It is not contended by the respondent that the appellant has acquired the right to permanent residence. Accordingly, his deportation may be justified on grounds of public policy. In applying the principle of proportionality as I am required to do, under regulation 27(5), I take into account that the appellant’s prospects of rehabilitation are much higher in the United Kingdom because of the practical commitment that his mother has demonstrated to his rehabilitation and the close

bond that he has with her. I have found that the appellant's conduct is not a present, genuine and sufficiently serious threat to the fundamental interests of society. I come to the conclusion that the respondent has not discharged the burden of showing that the appellant's deportation is justified on grounds of public policy."

8. The Secretary of State appealed, arguing that the First-tier Tribunal's findings were internally inconsistent and that weight should not have been given to the numerical scoring of the probation report. When granting permission, First-tier Tribunal Judge Boyes considered that the claimed misunderstanding was arguable with regard to the conclusions extrapolated from the report. Permission to appeal was granted on the basis that the First-tier Tribunal had arguably misunderstood the probation report and concluded wrongly that the appellant was a low threat and risk.
9. I have heard submissions from both parties and I must now consider whether there is irrationality in the First-tier Tribunal Judge's conclusions or whether the probation evidence has been properly weighed and the Judge's conclusions were open to him. I have been taken to the relevant passages in the probation report and I am quite satisfied that the First-tier Tribunal has considered the report properly and that the conclusion reached, albeit not one which perhaps every judge would reach, was open to this judge on this evidence.
10. Neither party has produced any later probation evidence which gives any better information as to whether at the date of decision by the First-tier Tribunal this appellant was a genuine, present and serious risk to the community of the United Kingdom, but on the basis of the probation report and the passages to which I have been taken I consider that it was open to the First-tier Tribunal to find that, with the assistance of his mother and the various probation activities he had undertaken, the risk was reduced below that level.

### **Conclusions**

I therefore dismiss the appeal of the Secretary of State against the First-tier Tribunal's decision and the decision of the First-tier Tribunal stands.

Signed: *Judith A J C Gleeson*  
Upper Tribunal Judge Gleeson

Date: 7 August 2018