Upper Tribunal
(Immigration and Asylum Chamber) Appeal no: **DA/00524/2017**

THE IMMIGRATION ACTS

At **Royal Courts of Justice** Decision signed: **22.01.2018**
On **22.01.2018** On **24.01.2018**

Before:

Upper Tribunal Judge
John FREEMAN

Between:

Kamil Karol SZCZECH

appellant

and

Secretary of State for the Home Department

respondent

Representation:
For the appellant: no appearance
For the respondent: Mr Paul Duffy

DECISION AND REASONS

This is an appeal, by the respondent to the original appeal, against the decision of the First-tier Tribunal (Judge Alan Baldwin), sitting at Harmondsworth on 23 October, to allow a deportation appeal by a citizen of Poland, born 1988. He has been released from detention since that decision, and was sent notice of hearing at his present address at Crewe, but left a message to say he had no transport and couldn't come. For reasons which will become clear, I decided to go ahead with the hearing.

2. The appellant had lived and worked here continuously, he said, since 2010; but the best evidence of his exercising Treaty rights before the judge came as Revenue print-outs, dating back to 1 October 2012: he said they would not supply records further back. The judge found that he had probably been doing so since 2010, and on that basis found he had acquired the necessary five years' residence as a 'qualified person' to give him a right of permanent residence.

NOTE: (1) no anonymity direction made at first instance will continue, unless extended by me.
(2) persons under 18 are referred to by initials, and must not be further identified.

3. However, the appellant had been sent to prison, for the first time, in July 2016, so that broke the continuity of his residence. This was the sole basis for the application for, and the grant of permission to appeal. On the other hand, whether or not the judge was entitled to find that the appellant had been a 'qualified person' since 2010, the question remains as to whether any error he made on that point was crucial to his decision.

4. The appellant had twice been sent to prison for six weeks for offences of battery against his wife, first in July 2016, for one committed on Christmas Eve 2015; and then on 27 July 2017, for another on 24 May 2016: both sentences had followed failure to respond to community penalties, and the second had been followed by a letter from the respondent on 6 September 2016, warning the appellant that further offences might lead to his deportation.

5. As I pointed out to Mr Duffy, the judge in his first (long) paragraph 18 began by accepting that these were clearly not trivial offences; but, contrary to the misreading in the application for permission to appeal, he went on to find that they were not "… matters of great seriousness …". The judge gave reasons for that finding, noting in particular that the offence dealt with in 2017 had been committed before the warning letter was sent. He concluded:

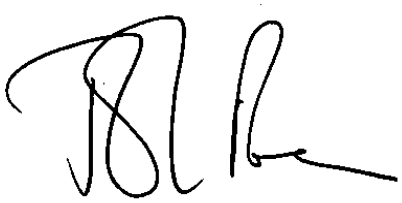
> The seriousness and sequence of offending is not … of a kind which justifies Deportation and it is certainly not justified in the case of one who [has shown the necessary period of qualifying residence to establish a permanent right]. … I conclude that the Respondent has not proved that the Appellant's convictions and conduct pose a genuine, present and sufficiently serious threat to the interests of public policy …

6. While the conclusion as to the position of someone in the appellant's position with a permanent right of residence may not have been justified by the evidence before the judge, it is quite clear that the judge would have allowed his appeal in any case. Looking at the requirements of the Immigration (European Economic Area) Regulations 2016 [the EEA Regulations], it is quite clear that the judge did not find the appellant's conduct represented the necessary 'genuine, present and sufficiently serious threat' under reg. 27 (5) (c), to justify his deportation on grounds of public policy, without needing to go on to consider whether any permanent right of residence he might have had required 'serious' grounds of that kind under reg. 27 (3).

7. It follows that, though the judge may have been wrong in what he said about the appellant's having a permanent right of residence in this country, that was not a material error of law which would justify setting aside his decision. I should however repeat the warning the judge gave the appellant about his future conduct, with this addition: he has

not yet established any permanent right of residence, and may well not be able to do so till he has been working here for five years continuously from his last release from prison, presumably in August 2017. So till that date in 2022, any further offences of any seriousness at all would most likely lead to his deportation.

Home Office appeal dismissed



(a judge of the Upper Tribunal)