Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00104/2019

THE IMMIGRATION ACTS

Heard at Birmingham CJC	**Decision & Reasons Promulgated**
On 22 March 2022	**On 3 May 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

RADOSLAW STARK
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: in person.
For the Respondent: Mr Bates, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant is a citizen of Poland born on 6 September 1991 who appeals a decision of the Secretary of State, dated 25 March 2019, to deport him from the United Kingdom as a result of his criminal conviction.

2. The sentencing remarks of His Honour Judge Longman, sitting at the Law Courts in Bristol on 18 December 2018, name eight defendants. In his introductory remarks Judge Longman stated:

The sentences I pass are intended to reflect all the offending behaviour in each Defendant's case in a way which is just and proportionate. I have also had regard to the guidelines in relation to discounts for guilty pleas. The Prosecution will apply for the forfeiture and destruction of all drugs recovered but those applications are not yet made and I shall make no such orders until the resolution of proceedings under the Proceeds of Crime Act when surcharges will also be added. There is a consolidated indictment and there was also a trial indictment. When I refer to numbers of accounts they will be to those of the trial indictment unless I specify otherwise.

Counts 1, 2 and 3 were three conspiracies to supply Class A drugs. In Count 1, the drugs were not specified. Counts 2 and 3 involved heroin and cocaine respectively. All three centred around a particular activity on an identifiable day or days. But in relation to Count 1, no drugs were recovered and, although Mr Penny pleaded guilty establishing the existence of the conspiracy, none of those tried were convicted. Counts 2 and 3 involved agreement between named Defendants to bring to Bristol for further supply and distribution wholesale, commercial quantities of Class A drugs which were recovered. Those offences were planned and organised and were plainly intended to result in the sale Class A drugs for substantial profit.

3. In relation to the appellant the Sentencing Judge's remarks are as follows:

Radoslaw Stark, you were convicted of Count 3; conspiring to supply cocaine. As a courier you travelled from the West Midlands to Bristol bringing 1 1/2 kg of cocaine with high purity. You had limited contact with anyone else associated with the conspiracy and you are acting under the direction of another or others. For guideline purposes, this is a Category 2 offence. Your role was a lesser role, giving a starting point of 5 years and a range of 3 ½ to 7 years.

It can be said in your favour that you are of previous good character. You are lawfully in the United Kingdom and previously you had been working legitimately. You have family and I do not doubt that the inevitable sentence will have an impact on them too. The least sentence that I can pass this one of 4 ½ years imprisonment. You will be credited to time served in custody and 82 days while on a qualifying curfew.

4. The relevance of the findings by the Sentencing Judge that this was a planned and organised event is referred to by the Secretary of State in her written submissions prior to the error of law hearing by reference the case of Land Baden – Wurttemberg v Tsakouridis [Directive 2004/38/EC) Case C-145/09 from which the following has been extracted from that judgement:

"Should the referring court concluded that the Union citizen concerned enjoys the protection of Article 28 (3) of Directive 2004/38, that provision **must be interpreted as meaning that the fight against crime in connection with dealing in narcotics as part of an organised group is capable of being covered by the concept of 'imperative grounds of public security' which may justify a measure expelling a Union citizen who has resided in the host Member State for the preceding ten years.** Should the referring court concluded that the Union citizen concerned enjoys the protection of Article 28 (2) a Directive 2004/38, that provision must be interpreted as meaning that the fight against crime in connection with dealing in narcotics as part of an organised group is covered by the concept of 'serious grounds of public policy or public security'."

5. In his witness statement dated 11 April 2019. The appellant confirmed that he was born in Bielawa in Poland where he grew up and

completed his education. The appellant states he did not complete his final education course as a result of a job opportunity. Towards the end of 2011 the appellant was working in a Call Centre where he met his fiancée Kamila Zagula who also worked there. The appellant states he and Kamila became a couple around 2012/2013 and lived together for six months before they decided to come to the UK where they had heard there were better work opportunities.

6. The appellant and Kamila entered the UK on 19 November 2013 and the appellant claims they have resided together ever since.

7. In 2013 the appellant obtained employment with DHL in Worcester, before obtaining a job as a packer for DPD in Birmingham in 2014 where he worked for a few months, before working in a chicken factory in Birmingham until 2015, and then with Poundland as a factory worker in one of their warehouses in Wolverhampton. The appellant then changed his job working as a CNC machine operative at CNC Speedwell in Walsall until he was arrested.

8. The finding of the First-tier Tribunal Judge that as a result of the appellant being arrested and remanded into custody on 26 October 2017 he had not attained the requisite period of five years exercising treaty rights in the UK and, therefore, had not acquired a right of permanent residence in the UK is correct. The level of protection the appellant can therefore rely upon is the lowest level, of public policy and public security; as per the decision to deport.

9. In relation to the appellant's current family composition, the appellant and his fiancée have a child together, Antoni Stark, born 13 January 2017, and now aged 5.

10. An issue that arose at the error of law hearing was the quality of the evidence from the Probation Service and the lack of a full copy of the OASys report that had been referred to. Directions were given for the provision of such a document, but the Upper Tribunal have still not seen a copy of the full OASys assessment and the appellant was only able to provide a further letter dated 15 November 2021.

11. An earlier letter dated 19 March 2019, written by the appellant's Offender Supervisor in the Offender Management Unit at HMP Guys Marsh, Shaftesbury, in Dorset, addressed the appellant's previous solicitors, is in the following terms:

> We are in receipt of your request for confirmation of the outcome of the risk assessment carried out using the OASys document. An OASys document used by the Prison Service, Probation, Parole Board in the Home Office as a recognised tool the risk assessments.
>
> I am the Offender Supervisor who carried out that assessment using the core records, including Court documents, but also carrying out an extensive one-to-one interview.
>
> On completion of the OASys document on 11/02/2019 scoring tool of the assessment deemed Mr Stark as low risk.
>
> The OASys document is then countersigned by the prison's Senior Probation Officer the managerial and quality purposes.

12. The more recent letter dated 15 November 2021 is written by a Probation Service Officer who is the current supervisor for the appellant on his licence. The letter confirms the appellant was released on licence on 31 July 2020 having served half his sentence. The letter states:

> "Since Mr Stark has been on licence he has attended all appointments offered to him. He had engaged well in supervision and completed offence focused work which is part of his sentence plan.
>
> Mr Stark has been forthcoming with details of his lifestyle and family. He has been the main carer for his son since his release, as his wife has had to work to support the family. Mr Stark's biggest concern has been that he is unable to work and financially support his family.
>
> Mr Stark is aware that his involvement with the Criminal Justice System has led to his deportation status. Mr Stark has been a previous good behaviour and is aware of the consequences of his actions.

13. That is all the information available from that source. It is known that a full OASys report will contain a far more detailed assessment and categorises risk by reference to various scoring tools and the risk an individual may pose both in custody and in the community to various named groups. Such report will explore in detail the reasons for the individual committing the offence(s) and assessed steps taken to deal with resolving such issues when assessing situations in which risk may arise.

14. The appellant was questioned by Mr Bates in which he admitted that he committed the index offence as he lacked money "a couple of times" and that due to his financial situation he decided to try and make money that led to his offending; but repeated that he had been out of prison for two years now and had not reoffended.

15. The appellant accepted he remained on licence until 31 December 2022 and it is therefore not unexpected that he has not reoffended for, if he had, it is likely he will have to serve the remainder of the licence period in prison together with any additional sentence imposed by the Courts.

16. The appellant expresses regret for what he did, but in answer to a question put in cross-examination he admitted he pleaded not guilty at the trial.

17. The appellant confirmed that he has family in Poland namely his mother who works in both Poland and Germany and his father but raised the issue of family security by reference to events in Ukraine; although there was no evidence of any adverse impact upon the family unit there. The appellant confirmed he has a brother who is in the UK.

18. The appellant was asked by reference to a previous appeal, in which he accepted he and his partner could live as a family in Poland, whether this was now his choice. He accepts that that was the case then, but his son was here, had not lived in Poland, and that the situation in Poland was bad due to the events in Ukraine.

19. The appellant's partner Kamila has provided a statement dated 12 April 2019 but did not attend the hearing and therefore was not cross-examined or tested on her written evidence. In that statement she confirms the appellant's account of when they met, when their relationship began, when they came to the UK, and her own employment exercising treaty rights from 2013/14 to the date of the statement.

20. Kamila confirmed that when the appellant was in prison she tried to visit him as often as possible, fortnightly, and that she took her son to see him and that they speak on the telephone and write to each other. Kamila confirms she has family settled in the United Kingdom, being her two brothers, and that since her return to work she has had to rely on family in the UK when the appellant was in prison to help look after their son, as she works at times six days a week from 8:30 AM to 5 PM as she wishes to provide for their son.

21. Kamila's statement concludes with the comment that she is wishing for the appellant to be released so they can live as a complete family again.

Discussion

22. As the offence and the decision to deport predate 'Brexit day' the merits of the appeal need to be assessed by reference to the law that prevailed under the Immigration (EEA) Regulations 2016.

23. The starting point is the need to assess whether the appellant presents a genuine present and sufficiently serious threat to a fundamental interest of society. The date of assessment is the date of appeal, the burden of proof rests on Secretary of State the Home Department, and the standard of proof is the balance of probabilities: see Arranz (EEA Regulations – deportation – test) [2017] UKUT 00294 (IAC).

24. In undertaking this assessment I am aware that the focus should be on the propensity of the individual to re-offend rather than issues of deterrence or public revulsion, which have no part to play in assessment save in exceptionally serious cases: see Secretary State the Department v Straszewski and Kersys [2015] EWCA Civ 1245.

25. In the reasons for refusal letter the decision maker concludes that the appellant does pose a genuine present and sufficiently serious threat to the interests of public policy if allowed to remain in the United Kingdom by reference to the offence for which he was convicted, his conduct, and regulation 27 of the EEA Regulations 2016.

26. Regulation 27 reads:

> **27.**—(1) In this regulation, a "relevant decision" means an EEA decision taken on the grounds of public policy, public security or public health.
>
> (2) A relevant decision may not be taken to serve economic ends.

(3) A relevant decision may not be taken in respect of a person with a right of permanent residence under regulation 15 except on serious grounds of public policy and public security.

(4) A relevant decision may not be taken except on imperative grounds of public security in respect of an EEA national who—

(a) has resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision; or

(b) is under the age of 18, unless the relevant decision is in the best interests of the person concerned, as provided for in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989.

(5) The public policy and public security requirements of the United Kingdom include restricting rights otherwise conferred by these Regulations in order to protect the fundamental interests of society, and where a relevant decision is taken on grounds of public policy or public security it must also be taken in accordance with the following principles—

(a) the decision must comply with the principle of proportionality;

(b) the decision must be based exclusively on the personal conduct of the person concerned;

(c) the personal conduct of the person must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, taking into account past conduct of the person and that the threat does not need to be imminent;

(d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;

(e) a person's previous criminal convictions do not in themselves justify the decision;

(f) the decision may be taken on preventative grounds, even in the absence of a previous criminal conviction, provided the grounds are specific to the person.

(6) Before taking a relevant decision on the grounds of public policy and public security in relation to a person ("P") who is resident in the United Kingdom, the decision maker must take account of considerations such as the age, state of health, family and economic situation of P, P's length of residence in the

United Kingdom, P's social and cultural integration into the United Kingdom and the extent of P's links with P's country of origin.

(7) In the case of a relevant decision taken on grounds of public health—

(a) a disease that does not have epidemic potential as defined by the relevant instruments of the World Health Organisation or is not a disease listed in Schedule 1 to the Health Protection (Notification) Regulations 2010(**2**); or

(b) if the person concerned is in the United Kingdom, any disease occurring after the three month period beginning on the date on which the person arrived in the United Kingdom,

does not constitute grounds for the decision.

(8) A court or tribunal considering whether the requirements of this regulation are met must (in particular) have regard to the considerations contained in Schedule 1 (considerations of public policy, public security and the fundamental interests of society etc.).

27. Schedule 1 of the 2016 Regulations reads:

SCHEDULE 1CONSIDERATIONS OF PUBLIC POLICY, PUBLIC SECURITY AND THE FUNDAMENTAL INTERESTS OF SOCIETY ETC.

Considerations of public policy and public security

1. The EU Treaties do not impose a uniform scale of public policy or public security values: member States enjoy considerable discretion, acting within the parameters set by the EU Treaties, applied where relevant by the EEA agreement, to define their own standards of public policy and public security, for purposes tailored to their individual contexts, from time to time.

Application of paragraph 1 to the United Kingdom

2. An EEA national or the family member of an EEA national having extensive familial and societal links with persons of the same nationality or language does not amount to integration in the United Kingdom; a significant degree of wider cultural and societal integration must be present before a person may be regarded as integrated in the United Kingdom.

3. Where an EEA national or the family member of an EEA national has received a custodial sentence, or is a persistent offender, the longer the sentence, or the more numerous the convictions, the greater the likelihood that the individual's continued presence in the United Kingdom represents a genuine,

present and sufficiently serious threat affecting of the fundamental interests of society.

4. Little weight is to be attached to the integration of an EEA national or the family member of an EEA national within the United Kingdom if the alleged integrating links were formed at or around the same time as—

(a) the commission of a criminal offence;

(b) an act otherwise affecting the fundamental interests of society;

(c) the EEA national or family member of an EEA national was in custody.

5. The removal from the United Kingdom of an EEA national or the family member of an EEA national who is able to provide substantive evidence of not demonstrating a threat (for example, through demonstrating that the EEA national or the family member of an EEA national has successfully reformed or rehabilitated) is less likely to be proportionate.

6. It is consistent with public policy and public security requirements in the United Kingdom that EEA decisions may be taken in order to refuse, terminate or withdraw any right otherwise conferred by these Regulations in the case of abuse of rights or fraud, including—

(a) entering, attempting to enter or assisting another person to enter or to attempt to enter, a marriage, civil partnership or durable partnership of convenience; or

(b) fraudulently obtaining or attempting to obtain, or assisting another to obtain or to attempt to obtain, a right to reside under these Regulations.

The fundamental interests of society

7. For the purposes of these Regulations, the fundamental interests of society in the United Kingdom include—

(a) preventing unlawful immigration and abuse of the immigration laws, and maintaining the integrity and effectiveness of the immigration control system (including under these Regulations) and of the Common Travel Area;

(b) maintaining public order;

(c) preventing social harm;

(d) preventing the evasion of taxes and duties;

(e) protecting public services;

(f) excluding or removing an EEA national or family member of an EEA national with a conviction (including where the conduct of that person is likely to cause, or has in fact caused, public offence) and maintaining public confidence in the ability of the relevant authorities to take such action;

(g) tackling offences likely to cause harm to society where an immediate or direct victim may be difficult to identify but where there is wider societal harm (such as offences related to the misuse of drugs or crime with a cross-border dimension as mentioned in Article 83(1) of the Treaty on the Functioning of the European Union);

(h) combating the effects of persistent offending (particularly in relation to offences, which if taken in isolation, may otherwise be unlikely to meet the requirements of regulation 27);

(i) protecting the rights and freedoms of others, particularly from exploitation and trafficking;

(j) protecting the public;

(k) acting in the best interests of a child (including where doing so entails refusing a child admission to the United Kingdom, or otherwise taking an EEA decision against a child);

(l) countering terrorism and extremism and protecting shared values.

28. In his submissions Mr Bates sought to rely upon the reasons for refusal letter and the serious nature of the offence which, it cannot be disputed, should the appellant reoffend in a similar fashion in the future, could result in serious consequences for society as a result of the negative impact of drugs.

29. Although it is accepted there is a close relationship between the appellant and his partner it is also clear that she was part of his life and a part of the family unit that he speaks about some highly at the time he committed the offence; meaning that the presence of his partner and child is not the deterrent factor that the appellant might claim it is.

30. The appellant openly admitted that he committed the offence for monetary gain and even though this was a first offence it was a very serious offence involving Class A drugs. There is insufficient evidence to show the appellant has done enough to deal with any aspect of his personality that made him believe that if he experiences financial difficulties it was acceptable for him to behave in the way that he did. A full OASys report may have assisted on this issue. There is insufficient evidence therefore to show that if the appellant does find himself in a similar adverse financial position that he would not

reoffend again if he thought it was a means of earning funds that he believed he required. I accept the submission of Mr Bates that the Secretary of State is not required to show that the risk of reoffending is imminent.

31. As noted above, the appellant is still subject to the conditions of his licence and subject to these deportation proceedings and so it is highly unlikely that he would have reoffended.

32. The difficulty is that the appellant's motivation for the offending and underlying struggles mentioned cannot be balanced against any satisfactory explanation for how the appellant has dealt with such issues such as to enable it to be established that there is no risk in the future.

33. Even if the statement in the letter from the Probation Services to be taken at face value, that the assessment of the appellant is a person who presents a low risk of reoffending, I do not have the basis on which such an assessment was made. Even though it was the appellant's first offence it was a very serious offence and low risk does not mean no risk, especially as the factors underpinning the motivation for such offending have not been adequately dealt with.

34. Mr Bates submissions that there was no evidence of insight into what the appellant had done is perhaps supported by his not guilty plea when he was clearly guilty of the offences charged, as confirmed after the jury trial.

35. It is not disputed that the fight against organised drug-related crime is covered by the concept of "the grounds of public policy" and therefore this a relevant factor according to regulation 27 (1) of the 2016 Regulations.

36. Whilst it is accepted that Article 27(2) of Directive 2004/38 implies the existence in the individual concerned the propensity to repeat the conduct constituting such a threat in the future, to satisfy the required test, in the case of K. (and allegations de crimes de guerre) (Citizenship of the European Union - Right to move and reside freely within the territory of the Member States – Restrictions - judgement) [2018] EUECJ C- 331/16 the Court of Justice accepted that it is possible that past conduct alone may constitute such a threat to the requirement of public policy. It is not arguably rational to conclude that such a situation can arise in relation to drug offences.

37. The fact the appellant was sentenced to a period of 4 1/2 years is relevant when considering Schedule 1, paragraph 3 which provides that longer the sentence the greater the likelihood that the individual's continued presence in the United Kingdom represents a genuine, present and sufficiently serious threat affecting the fundamental interests of society.

38. It is also the case, that Schedule 1, paragraph 7 provides that the fundamental interests of society include the prevention of social harm and offences likely to cause harm to society where an intermediate or direct victim may be difficult to identify, specifically identified as those relating to drug offences, and protecting the public. The purpose of Regulation 27 is to identify elements of an individual offender or

offence that strengthens the Secretary of State in establishing there is a future threat.

39. The appellant's case is that he has not offended for two years since he was released, despite his difficult financial circumstances as he has been unable to work, yet has not reoffended, and claims that he would not do so even if he became desperate in the future. The appellant claims a deterrent element has been the effect of being sent to prison and not the accessing the family which he found difficult. He claims he understands what he did was wrong and thinks of doing everything to avoid the same in the future and now wants to focus on being a good father and wanting to go back to work. The appellant currently looks after the house and his son wants to be able to continue to do so and claims that the last two years have been hard.

40. Whilst I can understand the appellant's statements to the Tribunal the difficulty for him is that identified in the paragraphs above; that all those matters that he claims act as deterrent factors for him now were all present in the past when he committed the offence.

41. I can only assess the merits of the claim on the basis of the evidence provided and on the basis of that evidence, when considering matters a whole, I find that the Secretary of State has discharged the burden of proof upon her to show there is a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society as required by the Regulations, in this case.

42. That is not, however, sufficient as it is necessary to consider the proportionality of the decision to deport the appellant.

43. Proportionality has not been factored into the assessment above, save that there is an overlap of factual circumstances, as this element only becomes relevant if the 'serious threat' test is made out. As it has, I now consider this issue.

44. I have taken into account exclusively the personal conduct of the appellant who I have found represents a genuine present and sufficiently serious threat for the reasons set out above.

45. This decision is not made on the basis of factors isolated from the particulars of this case.

46. There is in this case an argument for including on the Secretary of State side of the balancing argument of the proportionality holistic assessment, preventative grounds, especially in light of the nature of the offence and the damage drugs do to the community in the UK as elsewhere.

47. It is not disputed the appellant has lived in the United Kingdom since entry and that he resides here with his partner and their child as noted above.

48. The appellant is a young healthy individual which appears to be the situation for the other family members.

49. The appellant worked in the United Kingdom and the family unit is currently supported by his partner's continued working to support the family whilst the appellant is unable to do so, with the assistance of her own family in the UK whilst the appellant was in prison. There is

clearly a strong work ethic within the adult members of this family unit as demonstrated by their employment history in Poland and in the UK.

50. The appellant and his partner, both Polish nationals exercising free movement rights, have resided in the United Kingdom for the same period of time and their work, home, and social life connection to the UK based family and elsewhere, do appear to have a degree of social and cultural integration albeit they have not been here for a great length of time.

51. I comment above about the evidence given before the First-tier Tribunal of the ability of his family unit to re-establish themselves in Poland and find insufficient evidence has been given to show that this is not a realistic prospect. It is clear there are no insurmountable obstacles to this family unit returning to Poland. The appellant has family there, is clearly employable as is his partner, and it is not made out they will not be able to obtain the required degree of support or childcare for their son to enable them to continue working if required. They both know the language and until they came to the UK had lived in Poland all their lives. Whilst the situation in Ukraine and the considerable number of refugees from that country entering Poland and being provided with a place of safety, which is commendable, is noted, it has not been made out it will impact upon any member of this family unit if they return to Poland.

52. I accept that the appellant and his partner wish to remain in the United Kingdom working on building a better life for themselves. Many from Poland came to the UK at a similar time for work opportunities exercising their free movement rights, but there is a reasonable expectation of anybody settling in another country that they respect the laws of the land and do not pose a future threat.

53. The relation to the best interests of child, is not made out the best interest of the appellant's son is only to remain in the UK. The best interests of this child are to remain with his mother and father who are clearly providing a loving and caring environment. No strong reason was made out as to why the child could not go to Poland with his parents and achieve the best that he is able to do within the education system there.

54. It is also necessary to consider prospects of rehabilitation as prospects of continuing successful rehabilitation can be relevant to proportionality: see MC (Essa principles recast) Portugal [2015] UKUT 00520 (IAC) Secretary of State for the Home Department v Dumliauskas & Ors [2015] EWCA Civ 145, Tsakouridis (European citizenship) [2010] EUECJ C-145/09.

55. The difficulty in this case is that evidence of rehabilitation, by undertaking courses or undertaking other work designed to reduce the prospects of rehabilitation is very limited. The appellant refers to his having undertaken a number of courses in prison and there is evidence from the Probation Service of work being undertaken with the appellant to ensure he understands consequences of his offending behaviour; but is has not been shown this is sufficient to rule out the prospect of future offending. Nor has it been established that the

appellant would not be able to successfully rehabilitate within Poland with the support of the professional services available there, if required. I do not find this is the determinative factor.

56. When considering arguments on behalf of the Secretary of State, the appellant has been convicted of a drug-related offence. The damage caused to society by drugs, both upon users and society in general, need not be set out in detail here, but it is well known that the manufacture and trade of illegal drugs is a key driver of organised crime, that there is a strong relationship between substance misuse, shop theft and the use of violence and aggression by drug-affected offenders. The total drugs offences recorded by the police across the UK in 2020/21 was 253,875. Drug misuse and addiction in the UK also has a serious impact on public health and wider society. In 2020/21 there were 6,091 drug related deaths in the UK. NHS England recorded 100,000 admissions for drug-related mental and behavioural disorders in 2019/20.

57. Having stood back and having undertaken the require holistic assessment, paying proper regard to the appellant's free movement rights, legal principles applicable to an appeal of this nature, and the rights of the family, I find that although there are points in the appellant's favour when weighing the competing arguments, that the balance of the scales when assessing proportionality comes down in favour of the Secretary of State.

58. In relation to article 8 ECHR, so far as relevant, is accepted the appellant's family life in the United Kingdom. As the family can be removed as a whole their family life can continue in Poland and there will therefore be no interference in the same. In relation to their private life, I accept private life with the UK element to UK base will not continue with is not be made out that the appellant and his partner will not be able to work in Poland, their child will be able to start his education there, and it was not made out as anything particular about their private life that would make interference in the same disproportionate when weighing this that against the Secretary of State's right to prevent crime and the weight to be given to the public interest drug-related offences are concerned. I therefore find the Secretary of State has established that any interference with a protected right pursuant to article 8 ECHR disproportionate.

59. I therefore conclude that the Secretary of State has discharged the burden upon her to the required standard to show that any interference with the free movement rights of the appellant or any other family member in deporting the appellant from the United Kingdom to Poland, with the resulting disruption to his, his partners, and child's rights as EU citizens, so far as they exist, is proportionate. On that basis I must dismiss the appeal.

Decision

60. I dismiss the appeal.

Anonymity.

61. The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated 8 April 2022