**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: DA/00143/2017

**THE IMMIGRATION ACTS**

| **Heard at Glasgow** | **Decision & Reasons Promulgated** |
|---|---|
| **On 30 October 2017** | **On 1 November 2017** |

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**ROBERT MEREK GORYL**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by LKW, Solicitors
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Poland, born on 25 April 1985. The respondent decided to deport him for reasons explained in her letter dated 23 February 2017.

2. First-tier Tribunal Judge McGrade dismissed the appellant's appeal for reasons explained in his decision promulgated on 20 July 2017.

3. (The judge found against the appellant on establishment of 5 years residence, and that finding is not challenged.)

4. Permission to appeal was granted by the UT.

5. The grounds of appeal to the UT narrate uncontentious matters, and the judge's acceptance at ¶12 "that the pattern of serious offending behaviour has not continued following [the appellant's] arrival in UK", and then continue:

> For measures to be justified on grounds of public policy or public security, the personal conduct of the person involved must present a genuine, present sufficiently serious threat affecting one of the fundamental interests of the society *[Citizenship Directive, Art.27(2); EEA Regulations Reg 21 (5) (c)]*. The threat must be present at the date of the deportation order *[BF (Portugal) v SSHD 2009 EWCA Civ 923]*. The fact that the appellant has committed previous offences is not a matter, which can solely justify deportation.
>
> In those circumstances, it is evident the FtT failed to follow the guidance and legal principles set by Court of Appeal in *BF* (Portugal) and *Gheorghiu* [2016] UKUT 24.

6. Mr Winter submitted further to the grounds as follows:

   (i) The case raised a short point, whether the tribunal was right in finding that the appellant represented a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

   (ii) The decision narrated the appellant's previous convictions in Poland, admittedly quite serious, but the last of which was imposed on 5 October 2009, attracting 18 months imprisonment.

   (iii) The reasoning for the decision was at paragraph 12. There was no sufficient explanation there why the appellant represented a threat in the terms required, all the significant offending having been in Poland.

   (iv) In so far as there was any reasoning at paragraph 12, it was inadequate, given the minor nature of the offending in the UK (2013, possession of cannabis, fine £75); and there was no reasoning for the finding that the appellant had taken no steps to reform or rehabilitate himself. Such steps were shown by the minor nature of the further offending.

   (v) This was not a rationality challenge, but based on the reasons given being inadequate to support the outcome.

   (vi) There was no scope for further hearing. The primary facts were not in significant dispute.

   (vii) The decision should be reversed.

7. Mrs O'Brien submitted thus.

   (i) The grounds were no more than disagreement with clear findings reached by the judge.

(ii) The judge's assessment was a factual one; it was within reason; and it was adequately explained.

(iii) Permission had been refused by the FtT. Although that decision had been procedurally superseded, its reasoning was correct and was adopted:

> The judge … went on to look at the number of previous convictions for which the appellant received substantial terms of imprisonment, albeit some were suspended … It was because the appellant had been convicted in the UK and in the absence of it being shown he had taken any steps to reform or rehabilitate himself, the judge comes the conclusion that the applicant does represent a genuine threat justifying his deportation … those findings were open … on the evidence and disclose no [arguable] error of law.

(iv) At paragraph 12 the judge did not fall into the error of saying that previous convictions in Poland solely justify the outcome. He noted the further conviction in the UK, relatively minor but related to drugs, and a sensible indicator against reform or rehabilitation. The finding at paragraph 12 of the absence of any steps in that direction was also to be read in context of the whole decision. Although under the further heading of proportionality, the judge was clearly unimpressed by the evidence brought by the appellant about his relationship and about his employment history. Those matters were relevant to rehabilitation and ongoing propensity to offend.

(v) The case might have been capable of decision either way, but the judge gave his reasons, and no error in point of law was shown in coming down on the side which he did.

(vi) The appellant's challenge was essentially that the outcome was perverse, but that was not made out.

8. Mr Winter in response submitted that the judge required to address each element of the test – whether the threat was genuine; whether it was present; and whether it was sufficiently serious. His reasons did not sufficiently support findings adverse to the appellant on any of those elements.

9. I reserved my decision.

10. No reference was made to either of the cases cited in the grounds. It does not appear that they illustrate any legal principle which the decision fails to observe.

11. The error suggested by the grounds is that the judge thought that the Polish convictions solely justified the outcome. That error is not present in the decision.

12. Reading paragraph 12 alone, the decision is plainly based not on 1 factor but on 3, namely: (1) the number and seriousness of offences in Poland; (2) conviction of a further offence in the UK; and (3) absence of any evidence of steps towards reform or rehabilitation.

13. That alone might dispose of the grounds.

14. At paragraphs 13 – 18 the judge makes unchallenged findings, under the heading of proportionality. He explains why the appellant's evidence has fallen short of making out his claims about his employment history, his relationship, his partner's alleged need for his assistance, and his estrangement from his family in Poland. I agree with the respondent that factor (3) is fortified by reading the decision as a whole.

15. The challenge in the submissions was that the judge gave no adequate reasons. It was not that there was nothing in the case by which any judge might, within reason, have dismissed the appeal.

16. The challenge of inadequacy of reasoning has not been made out.

17. The decision has not been shown to fall beyond the scope of reason, in so far as there was a latent challenge to that effect.

18. It has not been shown that the making of the decision of the FtT involved the making of any error on a point of law. That decision shall stand.

19. No anonymity direction has been requested or made.

Hugh Macleman

31 October 2017
Upper Tribunal Judge Macleman