



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00110/2017

THE IMMIGRATION ACTS

Heard at Field House
On 17th April 2018

Decision & Reasons Promulgated
On 4th July 2018

Before

**THE HONOURABLE MRS JUSTICE LAMBERT DBE
UPPER TRIBUNAL JUDGE KING TD**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR MICHAEL MIEDZINSKI

Respondent

DECISION AND REASONS

1. The Respondent is a citizen of Poland who entered the United Kingdom in December 1998 at the age of one month and has lived in the UK ever since. He is now aged 19 years. Between February 2013 and November 2016 he was convicted of a series of 27 criminal offences, including offences of violence and dishonesty and class A drug possession, for which he received custodial sentences. He was in prison between October 2013 and January 2014; between March and May 2014; in January 2015; between February 2015 and May 2016 and between September 2016 and January 2017. On 18th February 2017, the Appellant made a deportation order against him under regulation 27 of the Immigration (European Economic Area) Regulations 2016.
2. The appeal was heard on 15th December 2017 by First tier Tribunal Judge Burns who, by a decision promulgated on 15th January 2018 allowed the appeal and set aside the deportation order made in February 2017. The Secretary of State for the Home Department appealed the decision.

3. Judge Burns decided that the Respondent could not be deported save on imperative grounds of public security (Regulation 27(4)) as he had resided in the United Kingdom for a continuous period of 10 years before the relevant deportation decision. He interpreted "prior to the relevant decision" in Regulation 27(4) to refer to any period of continuous residence in the UK "not necessarily immediately prior to" the deportation decision. It was common ground between both parties to this appeal that Judge Burns' approach was wrong. The CJEU judgment in *MG (Portugal)* [2014] 1 WLR 2441 establishes that the 10-year period necessary to acquire the enhanced protection of Regulation 27(4) must be counted back from the date of the deportation order and not counted forward from the time of the person's first residence.
4. The Respondent accepted that Judge Burns had made an error of law in paragraph 19 of his judgment but submitted that the Judge had, thereafter at paragraph 21, considered and applied (in the alternative to his preferred course) the lawful approach by considering the Appellant's integrating links with the UK and concluding that there was no more reason to have lost his integration than any other young offender. We do not accept that, having taken a wrong turn in his interpretation of Regulation 27(4), that material error is cured by the Judge's consideration of the Respondent's links. His assessment is perfunctory. There has been no consideration given to the nature of the Respondent's integrative links during the first 15 years of his life, whether the repeated periods of incarceration broke any links and no overall assessment of the Respondent's situation (all matters required to be addressed by reason of Regulation 3(4)).
5. We therefore allow the appeal and set aside the decision for it to be remade. No facts preserved.
6. We were advised by Counsel for the Appellant that the CJEU judgment in the conjoined cases of C-316/16 and C-424/16 (*Land Baden Württemberg/Franco Vomero*) was handed down on the morning of the appeal before us (17th April 2017). Although the full judgment was not available the Press Release states "that it is a prerequisite of eligibility for enhanced protection against expulsion that the person concerned must have a right of permanent residence". The judgment also considers the 10 years continuous residence and the approach to be taken when a period of residence is punctuated by periods of imprisonment. This judgment is therefore of great importance to the issues which arise in the appeal and the parties will doubtless wish to consider the effect of the judgment on their respective submissions.

Notice of Decision

The appeal is allowed in the Upper Tribunal to the extent that the decision of the First tier Tribunal Judge is set aside, the appeal to be reheard in the First tier Tribunal and a fresh decision made.

No anonymity direction is made.



Signed

Date: 2 July 2018

for Mrs Justice Lambert DBE