



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: DA/00535/2019

THE IMMIGRATION ACTS

Heard at Bradford

On 20 December 2021

**Decision & Reasons
Promulgated
On 19 January 2022**

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JAKUB DAVID MALOLEPSZY

(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr Diwnycz, Senior Home Office Presenting Officer
For the Respondent: Ms Sadar

DECISION AND REASONS

1. I shall refer to the appellant as the 'respondent' and the respondent as the 'appellant', as they appeared respectively before the First-tier Tribunal. The appellant was born in 1993 and is a citizen of Poland. He appealed against a decision of the Secretary of State dated 22 October 2019 to

deport him. The First-tier Tribunal, in a decision promulgated on 14 May 2021, allowed the appeal under the Immigration (EEA) Regulations 2016. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The appellant suffers from a psychotic illness (probably paranoid schizophrenia) and is currently detained under the Mental Health Act 1983. He was convicted of six offences between 2014 and 2019 including possession of a Class B drug, threatening behaviour, collecting alms by false pretence and, most recently, criminal damage. The judge recorded that 'a custodial sentence was not given on any occasion. All matters were dealt with by the Magistrates' Court'. As regards the last offence of criminal damage, the judge states at [27]: 'the Appellant had wanted to be detained in order to have somewhere to stay and to access food. That is why he went into a Tesco store and smashed some bottles so he would be arrested.'
3. The issues before the First-tier Tribunal are summarised in the Rule 24 response of Ms Sardar, who appeared for the appellant in the Upper Tribunal:

In considering an appeal against deportation of a European national the essential questions for the First-tier Tribunal Judge to consider are:

(i) The level of protection afforded to the EEA national i.e. did the Respondent achieve Permanent Residence (PR) under Regulation 15?

(ii) If not, does the personal conduct of the Respondent in this case 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.' (Regulation 27 (5)(c))

(iii) If so, was the decision proportionate, having regard to health, family and economic situation, length of residence in the UK, social and cultural integration here, and the extent of links abroad, and to the public interest factors under Schedule 1 to the EEA Regulations 2016?

4. The judge found (and the parties do not dispute) that the appellant is entitled lowest level of protection available to an EU national. The only ground of appeal asserts that the judge failed to consider the seriousness of the consequences of re-offending given that 'the appellant's offending behaviour is itself strongly indicative of a propensity to re-offend' and 'failed to give adequate reasons for the finding that the appellant does not present a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.' The Secretary of State submits that the judge failed to consider the consequences of the appellant failing to take his medication but continuing to take illegal drugs so that he may 'relapse into offending.' She further submits that the judge's proportionality assessment was flawed by a failure to consider mental health treatments available to the appellant in Poland.

5. I find that the ground is not made out and that the First-tier Tribunal decision is not flawed by legal error as pleaded by the Secretary of State or at all. First, I agree with Judge Neville (who refused permission to appeal in the First-tier Tribunal) that the respondent's use of the expression 'failed to consider' when referring to the judge's decision is wholly inappropriate when it is obvious from any reading of the First-tier Tribunal's thorough and detailed analysis that, whatever the respondent may think of the judge's findings, she has *considered* each and every matter specified in the grounds. Secondly, the findings which the judge has drawn from her careful consideration of the evidence are not irrational or incomplete. The judge may have reached findings with which the Secretary of State does not agree or, indeed, which another judge may not have reached, but that is not the point. The judge has reminded herself throughout of the correct test under the Regulations and has, where appropriate, had regard to relevant jurisprudence. The judge's reasons and findings on the relevant issues are well summarised in Ms Sardar's Rule 24 response:

(i) The Appellant observed "Dr Galappathie's opinion regarding the risk presented by the Appellant of further offending is measured against the stability and availability of assistance with regard to the Appellant's [Respondent] living conditions and managing of his mental health state." The FTT concludes that on the evidence "this does appear to be something which has been achieved in the past 22 months with regard to his offending behaviour..." [46];

(ii) The Respondent's offending conduct has been largely explained on balance to have stemmed from his mental health deterioration. But even in the circumstances of lockdown where the deterioration in his mental health was "entirely understandable" his conduct during this time did not stray into the criminal and any risk was to himself as opposed to other persons or property [47];

(iii) He has support from his mother and other family members [48] and enjoys a relationship with his daughter [49] which are protective factors;

(iv) His condition will need to be managed by health professions and he is currently receiving treatment at Miranda House and will no doubt be monitored in the event he is stable enough to resume living in the community [48];

(v) There is no indication that a risk of offending presents itself if he remains stable and supported [48];

(vi) In view of the Respondent's conduct since his release and lack of further offending despite a serious psychotic relapse, considerable weight is to be placed on Dr Galappathie's opinion that the Appellant presents a low risk of reoffending at the present time [48];

(vii) In view of the lack of offending on the part of the Respondent since June 2019 and taking into account the support and stability with which he has been provided she did not find that it had been established on balance that his conduct represents a genuine, present and sufficiently serious threat which affects one of the fundamental interests of society [49].

That reasoning, in my opinion, is cogent, rationally derived from the available evidence and frankly unimpeachable. There has been no 'failure to consider' any of the relevant matters in the appeal.

6. Thirdly, the challenge to the decision on the ground that the judge failed to consider the availability of mental health treatment in Poland is likewise not made out. The judge addressed this aspect of the appeal at [50] finding that 'it is not argued the treatment would not be available in Poland' but that 'familiarity with individuals providing [the appellant] with care' together with family support here in the United Kingdom would assist the appellant 'in regaining stability in his mental health.' Once again, whilst those may not necessarily be the same findings which all judges would draw from the same facts, the findings are not irrational, do not ignore relevant evidence nor are they based on irrelevant matters. Consequently, I can identify no good reason to interfere with them.
7. In the light of what I say above, the Secretary of State's appeal is dismissed.

Notice of Decision

The Secretary of State's appeal is dismissed.

Signed

Date 3 January 2022

Upper Tribunal Judge Lane

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.