IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002486
First-tier Tribunal No: HU-06933-2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 16 March 2023

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

JD
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Ms E Fitzsimons, counsel instructed by Turpin Miller LLP
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on 17 January 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and any member of his family is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant or his family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge JG Raymond promulgated on 23 February 2022.

2. Permission to appeal was granted by First-tier Tribunal Judge Lodato on 28 April 2022.

Anonymity

3. Such a direction was made previously to protect the appellant's children and is reiterated for that reason as well as owing to references to the appellant's mental health.

Background

4. The appellant, who is a Polish national, first arrived in the United Kingdom during 1995. In 2007 the appellant was issued a Registration Certificate. He has, as of 18 May 2020, acquired 26 criminal convictions for 60 offences committed while in the United Kingdom. The appellant was also convicted of extortion, in Poland, on 20 February 2012, the offence having taken place on 29 August 2011. On 12 December 2012, the appellant was deported to Poland following his conviction for an offence of robbery. The appellant elected not to exercise his right of appeal against a decision to deport dated 26 November 2012. In the aforementioned decision it was accepted that the appellant had acquired a permanent right of residence in the United Kingdom. Thereafter the appellant returned to the United Kingdom in breach of the deportation order and was apprehended on 15 December 2013. He continued to offend and was removed to Poland on around eight occasions between 2014 and 2019. On 21 September 2016, the appellant was served with a refusal to revoke a deportation order. The appellant was detained under immigration powers after serving a custodial sentence for the May 2020 conviction. He made further representations which were refused in a supplementary decision letter dated 11 August 2020.

5. The decision letter referred to regulation 34 (4) of the Immigration (European Economic Area) Regulations 2016, with reference to the need for a material change in the appellant's circumstances, as well as that the application to revoke the deportation order may only be made from outside the United Kingdom. The respondent noted, inter alia, the appellant's drug addiction, the number of and range of offences he had committed, his failure to rehabilitate, the professional risk assessment and concluded that there was no evidence of an improvement in his circumstances and that he continued to pose a serious risk of harm to the public.

The decision of the First-tier Tribunal

6. The First-tier Tribunal accepted that the appellant suffered from serious mental ill-health, but found that the appellant, his mother, and partner had not given an honest account of the resources available to him in Poland. The judge concluded that no unjustifiable harshness would result from the appellant's expulsion to Poland and dismissed the appeal under the Regulations as well as on human rights grounds.

The grounds of appeal

7. The grounds of appeal were as follows. Firstly, it was argued that there was a complete failure to refer to the country expert report as to the impact of the

appellant's Roma ethnicity on his ability to access essential services and employment. Secondly, the judge had not considered whether the appellant posed a present risk to the public. Thirdly, the judge erred in his consideration of the psychiatric evidence and in concluding that the Article 3 threshold was not reached. Fourthly, the judge did not consider the best interests of the appellant's children or whether the unduly harsh threshold was met. Fifthly, there were no clear findings as to the effect of deportation on the appellant's partner. Sixthly, the judge erred in his treatment of the independent social work report. Lastly, there was a failure to have regard to the medical records of the appellant's partner.

8. Permission to appeal was granted on the basis sought, with the judge granting permission making the following comment.

The appellant relies on seven grounds of appeal. The strongest arguments are to be found in the first, fourth and fifth grounds of appeal. The first ground asserts that the judge failed to have regard to a country expert report. There is no mention of this report throughout the determination. Given the comprehensive and detailed summary of the remainder of the evidence, it is arguable that the judge was unaware of this potentially important opinion evidence about the country conditions to which the appellant would be returned and his prospects from an objective standpoint. That is not to say that full consideration of this evidence would have necessarily produced a different overall outcome, but it is arguably an error of law for it to have been left out of the judicial analysis. There is force to the fourth and fifth grounds that the judge did not address his mind to unduly harsh test in accordance with recent caselaw and the legal effect of his relationship with his partner.

9. The appeal was opposed in the respondent's Rule 24 response dated 26 August 2022. The respondent argued that it would have made no material difference if the export report had been considered that it was implicit in the judge's findings that the unduly harsh test had been applied and that the weight the judge gave to the independent social work report was a matter for him.

The hearing

10. When this matter came before me, Ms Fitzsimons relied on her grounds of appeal as well as a skeleton argument dated 24 August 2022. For his part, Mr Tufan accepted that the judge had not referred to the expert report but contended that this error was not material because the issue of discrimination against Roma in Poland did not get the appellant anywhere. He added that the judge had referred to the psychiatric reports but was entitled to find that those reports did not materially assist the appellant. As the appellant could not succeed under Article 3, he could not succeed under Article 8. As for the unduly harsh assessment, the appellant had limited input into his children and the judge considered the Child Protection Plan, the independent social work report and the best interests of those children. The findings were open to the judge and the arguments made in the grounds were just disagreements.

11. At the end of the hearing, I announced that I was satisfied that the First-tier Tribunal made the material errors of law as outlined in the grounds and set aside the decision of the First-tier Tribunal with no findings preserved. In terms of the disposal of the appeal, Ms Fitzimons's view was that there had been an unfair consideration by the First-tier Tribunal and there was extensive fact-finding for the rehearing. Mr Tufan did not disagree.

Decision on error of law

12. It was common ground that the decision of the First-tier Tribunal contained no consideration of the detailed country expert report which was before it and that this amounted to an error of law. I find that this error is material owing to the many relevant issues which are contained in this report which might have been of some assistance in deciding this human rights appeal. Indeed, before the First-tier Tribunal, both written and oral submissions were made on the relevance of this evidence. Those issues included the nature and degree of societal discrimination against Roma people in Poland, the difficulties the appellant, as a Roma person, would face in accessing essential services and mental health services in particular as well as issues of integration and rehabilitation.

13. The above-mentioned omission from the decision and reasons suffices, alone, to render the decision of the First-tier Tribunal unsafe, however I will briefly address the remaining grounds.

14. The judge's assessment of the unchallenged psychiatric reports was flawed by the judge's failure to incorporate the opinion and diagnoses into his findings. For instance, at [94] the judge concludes that the appellant's mental health is 'caused by his criminal behaviour' and that the appellant's attempts of self-harm, one of which included an attempt to hang himself, were not 'serious.' There was no basis for these findings in the reports. Rather, the opinion of the consultant psychiatrist was that the appellant had diagnoses of Severe Depressive Episode, Generalised Anxiety Disorder and PTSD and that there was a high risk of suicide and self-harm if the appellant was forced to return to Poland. As the judge had not rejected this evidence as being unreliable, it was not open to him to substitute his own view for that of the medical expert. Furthermore, the opinion of the psychiatrist was the appellant had PTSD because of being the victim of a serious assault in 2021 as well as an earlier attack in 2017.

15. The First-tier Tribunal further fell into error in failing to state whether the appellant met the unduly harsh threshold in relation to either his children or partner and there was no regard had to the medical records of the appellant's partner in the findings that were reached.

16. Lastly, the judge's categorisation of the report of the independent social worker as unbalanced was manifestly unfair. The judge stated that the 'elephant in the room' was the lack of reference to the considerable harm inflicted on the children by the appellant in the past. I find that the judge's conclusion was misplaced as there was consideration in social work report of matters which went to support the Secretary of State's case, including but not limited to the appellant's extensive criminal history, the OASYs report and Child Protection Plans. Furthermore, the author of the report made her own independent enquiries of the school, probation, and the appellant's drug recovery worker before coming to her detailed conclusions and in any event, the focus of the report was rightly on the current situation and the impact upon the children of the appellant's proposed removal.

17. In deciding whether to retain the matter for remaking in the Upper Tribunal, I was mindful of statement 7 of the Senior President's Practice Statements of 25

September 2012. Taking into consideration the nature and extent of the findings to be made as well as that the appellant has yet to have an adequate consideration of his human rights appeal at the First-tier Tribunal, I reached the conclusion that it would be unfair to deprive him of such consideration.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Hatton Cross, with a time estimate of one day by any judge except First-tier Tribunal Judge Raymond.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

18 January 2023