IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003410

First-tier Tribunal No: DA/00022/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 23rd of October 2024

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

ADAM JAKUB NIEDZIELA
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr N Garrod, Counsel instructed by Aschfords Law Solicitors
For the Respondent: Ms S McKenzie, Senior Home Office Presenting Officer

Heard at Field House on 30 September 2024

DECISION AND REASONS

1. The appellant, who is a citizen of Poland, is appealing against a decision of Judge of the First-tier Tribunal Farmer ("the judge") promulgated on 27 June 2024.

2. The appellant has lived in the UK since 1994, when he was 10 years old. In August 2017 he was convicted of an extremely serious offence, for which he was sentenced to six years' imprisonment and made the subject of an indefinite restraining order.

Decision of the First-tier Tribunal

3. Although the UK has now left the European Union, it was common ground before the First-tier Tribunal that the appeal fell to be decided under the Immigration (European Economic Area) Regulations 2016 ("the 2016 Regulations").

4. One of the issues before the judge was the level of protection under the 2016 Regulations applicable to the appellant. The judge noted in paragraph 21 that there are three levels: "basic" protection; "serious" protection, which is acquired after obtaining permanent residence; and "imperative" protection, which is acquired after obtaining permanent residence and ten years continuous' residence. The judge found that despite the appellant living in the UK for approximately 30 years he was only entitled to the basic level of protection. The reasons given by the judge for this were the following:

   (a) The judge stated that it was only residence after 1 May 2004, when Poland joined the EU, that was relevant for calculating whether permanent residence had been acquired. This does not appear to have been in dispute before the First-tier Tribunal. In paragraph 31 the judge stated "Mr Garrod put the case on the basis that the appellant cannot claim to be exercising treaty rights prior to Poland joining the EU on 1 May 2004".

   (b) The judge considered whether, after May 2004, the appellant exercised Treaty Rights in the UK for a period of five years and concluded that he did not. The judge stated in paragraph 33 that she could only consider activity after 1 May 2004 and the evidence from that date onwards was of only sporadic employment and that it was mere speculation to suggest that he was a jobseeker when not employed. The judge stated in paragraph 34:

> "I am therefore not satisfied that he has achieved permanent residence and, consequently, cannot rely on the enhanced protection of either 5 or 10 years qualifying residence. He therefore benefits from the lowest level of protection from deportation".

5. The judge proceeded to consider the offending committed by the appellant. This included a detailed assessment of the nature of the offence as well as a consideration of the OASys Report, evidence from Social Services, and an ISW report. Having considered this evidence the judge concluded in paragraph 44 that the appellant represents a genuine, present and sufficiently serious threat affecting the fundamental interests of society.

6. The judge then considered the appellant's integration and circumstances in the UK and his links to Poland. The judge found that he does not have a family life with a partner or child in the UK and, despite the length of his residence, was not integrated. With respect to Poland, the judge found that he speaks Polish (and had misrepresented his ability in the language). He also found that the appellant had embellished his claim to fear travelling to Poland. Amongst other things, the judge noted the evidence of the appellant's sister who had initially said that she could not go to Poland but subsequently accepted that she regularly goes there on holiday. The judge stated in paragraphs 64 to 65:

> "64. When assessing his integration in the UK, I note that he has a very poor work history which I have set out above. He has been in an abusive relationship for a number of years. I do not accept that he has contributed to society. Although he has provided testimonials, only his sister attended to give evidence. I have read the evidence from his local church. I accept that he has attended his church and helped with some of the decoration there. He started that on his release from custody. I am not satisfied that his behaviour since 2021 in relation to his local church makes up for his lack of integration and contribution to society for the many years that he has lived in the UK.

> 65. I do not accept that he is integrated into the UK. He has had a significant adverse impact on the lives of his children, this is to such an extent that his parental rights have been terminated".

The Grounds of Appeal

7. There are three submissions in grounds of appeal.

8. The first submission argues that under Article 28 of Directive 2004/38/EC ("the Directive"), a person who has resided for 10 years in the UK is entitled to the highest level of protection even if he does not meet the conditions for a permanent right of residence. It is argued that, to the extent the 2016 Regulations are inconsistent with this, the Directive must be followed.

9. The second submission in the grounds is that the judge failed to properly consider the appellant's integration into the UK and that it was perverse to not recognise that the facts established that the UK is the appellant's home where he has lived nearly all of his life.

10. The third submission in the grounds contends that the judge erred by not accepting the evidence demonstrating that the appellant only poses a low future threat.

The new argument raised at the hearing

11. At the hearing, Mr Garrod advanced an argument that is not in the grounds. He submitted that the appellant's residence, for the purposes of calculating permanent residence, started before Poland acceded to the EU and the judge was wrong to find otherwise. There is no reference to this in the grounds and no application to amend the grounds has been (or, at the hearing, was) made. I am not prepared to consider an argument that is not in, or in any way related to, the ground of appeal. This argument has therefore not been considered.

Submission 1: permanent residence not necessary to benefit from imperative grounds level of protection

12. At the start of the hearing I drew to Mr Garrod's attention the judgment of the Court of Justice of the European Communities *B (Citizenship for the European Union – Right to move and reside freely – Enhanced protection against expulsion – Judgment)* [2018] EUECJ C-316/16 where at paragraph 49 the following is explained:

> "49. …[E]ven though it is not specified in the wording of the provisions concerned, the enhanced protection provided for in Article 28(3)(a) of Directive 2004/38 is available to a Union citizen only in so far as he first satisfies the eligibility condition for the protection referred to in Article 28(2) of that directive, namely having a right of permanent residence under Article 16 of that directive".

13. Mr Garrod was unable to reconcile his submissions with *B*, and did not argue that *B* was inapplicable in this case. In the light of *B* this ground has no merit.

Submission 2: failure to consider the appellant's integration in the UK

14. The judge undertook a thorough assessment of the appellant's links to the UK, having regard to (and engaging with) all of the evidence before her relating to

this. In his oral submissions, Mr Garrod focused on the length of time the appellant has been in the UK and submitted that the judge failed to properly consider this or give it adequate weight. However, it is apparent from even a cursory glance at the decision that the judge recognised, and took into account, the length of time the appellant has lived in the UK. For example, in paragraph 59 the judge states "the appellant has lived in the UK since he was 10 years old and is now 40 years old" and in paragraph 60 the judge states "I have put into the balance his length of residence in the UK (about 30 years) and his ties to the UK". The submissions in respect of the appellant's integration do not identify a legal error in the decision and are no more than a disagreement with findings that were plainly open to the judge and in respect of which the judge has given cogent reasons.

Submission 3: failure to follow evidence demonstrating the appellant is a low future threat

15. The judge undertook a comprehensive assessment of the evidence relating to the appellant's offending - and the risk of reoffending - having regard to all of the material evidence. Based on a careful review of the sentencing remarks, witness statements and the OASY's report, the judge found that, even though the appellant has complied with probation and undertaken rehabilitation courses, he has a lack of insight into the damage he caused to his children and remains a significant risk. The judge's reasoning in respect of the risk posed by the appellant is cogent, and the conclusions she reached are plainly within the range of reasonable responses based on the evidence. This submission, like the second submission, is no more than a disagreement with a well-reasoned and carefully considered finding that was open to the judge.

Notice of Decision

The grounds of appeal do not identify an error of law in the decision of the First-tier Tribunal. The decision therefore stands.

D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

22.10.2024