Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/47574/2014**

THE IMMIGRATION ACTS

Heard at UT(IAC)	**Decision & Reasons Promulgated**
Birmingham Employment Tribunal	
On 7th September 2015	**On 30th September 2015**

Before

UPPER TRIBUNAL JUDGE COKER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

AREK BEBENEK

Respondent

Representation:

For the Appellant: Mr A McVeety, Senior Home Office Presenting Officer
For the Respondent: Mr J Howard of Fountain Solicitors

DETERMINATION AND REASONS

1. The appellant SSHD was granted permission to appeal the decision of First-tier Tribunal Judge Mathews promulgated on 7th April 2015 who allowed Mr Bebenek's appeal against a decision dated 17th December 2014 to deport him in accordance with regulation 19(3)(b) and regulation 21 of the Immigration (European Economic Are) Regulations 2006 ("EEA Regulations"). Although the decision by the SSHD was certified under regulation 24AA of the EEA Regulations, Mr Bebenek was not removed from the UK prior to the hearing of his appeal.

2. The grounds upon which permission was sought are verbose and confusing. In summary they appear to be asserting:

   (i) In [3] to [10] the grounds take issues with the findings of the First-tier Tribunal judge as to risk of future offending, the interpretation and weight given to the OASys report; the lack of consideration given to the nature of the educational course undertaken by Mr Bebenek;
   (ii) In [7] the grounds assert that insufficient weight was given by the First-tier Tribunal judge to the wider impact that street robberies have upon the community, the feeling of insecurity and fear engendered in society by such crimes;
   (iii) In [11] the grounds assert there has been no clear finding on the credibility of Mr Bebenek , whether he poses a current risk ([12], [13] and [14]) and if so the magnitude of the risk and that this infects the assessment of rehabilitation which in [20] which in turn had little merit because Mr Bebenek only merited the lowest level of protection having been resident in the UK for less than five years;
   (iv) The grounds submit that the judge erred in attaching weight to the fact of the appellant's mother and siblings living in the UK for the purposes of Article 8
   (v) The grounds assert that the judge gave inadequate reasons for finding that Mr Bebenek's rehabilitation prospects were better in the UK; that his finding that Mr Bebenek had no ties in Poland was unreasonable on the evidence and that the appellant cannot, contrary to the finding of the judge, be said to have integrated into the UK given that his residence in the UK has been of short duration with a large period spent in prison.

   Background

3. Mr Bebenek, a Polish citizen date of birth 19th October 1993, came to the UK on 29th June 2009 aged 15 with his mother and two sisters. He has a grandfather in Poland and the evidence before the First-tier Tribunal was that neither he, his mother nor his siblings had any contact with his father, who remains in Poland. It was asserted that the father was an alcoholic and Mr Bebenek's mother 'had a difficult life' with him when she lived with him.

4. Mr Bebenek attended school for a short time, until he was 16, on arriving in the UK. His evidence was that after leaving school he found employment in a number of jobs and supported his mother during periods of her unemployment.

5. On 4th June 2014 he was convicted of robbery and sentenced to 30 months detention in a young offenders institution. He had previously been convicted of making threats at common law with sentence deferred and admonished in January 2011.

6. It was accepted by both parties that Mr Bebenek has not acquired five years continuous residence and thus he has only the lowest level of protection from deportation.

   Error of law

7. Mr McVeety submitted that there had been little or no consideration of the OASys report by the judge in reaching his findings; in particular the judge had failed to give consideration to the discussion in the OASYs report. He had erred in law in assessing present risk. He submitted that the judge had set out numerous positive features relied upon by Mr Bebenek but had failed to consider the negative features in particular the nature of the offence, that the offence was particularly nasty, that although assessed as being at low risk of re-offending he was a medium risk to the public if he did so.

8. In [26] to [28] and [30] the judge records having read and taken account of the index offence, the sentencing judge's remarks; he refers to the OASys reference to an acknowledgment by Mr Bebenek of the need to address and maintain abstinence form alcohol. The judge considered the oral evidence and made findings that Mr Bebenek had shown significant progress in addressing the risk factors associated with the index offence.

9. Although the judge did not make a specific credibility finding using those words it is plain that the judge considered the evidence of the mother and Mr Bebenek in the context of the OASys report and sentencing remarks. The judge states, and there was no suggestion that the judge had erroneously so stated, that he had considered and taken account of the OASYs report, the reasons given by the SSHD for taking the decision and the sentencing remarks. He specifically made findings as to the availability of accommodation and assistance if returned to Poland.

10. The judge referred to and made specific findings that the combination of the progress made during sentence, the supportive family environment in the UK together with proper motivation was important in his 'finding that the appellant's low risk of offending is receding further'.

11. The respondent herself n the reasons for the deportation decision states (in[26]) "Whilst the risk of you reoffending is considered to be low, the serious harm which would be caused as a result of any instances of offending is such that it is not considered reasonable to leave the public vulnerable to the effects of your re-offending".

12. The judge made clear findings that Mr Bebenek had addressed the issues that prompted the offence and that there had been improvements in his personal circumstances.

13. In order to sustain the decision of the respondent there must be a "genuine, present and sufficiently serious threat " that matters "isolated from the particulars of the case or which relate to general prevention do not justify the decision" and the decision "must be based exclusively on the personal conduct of the person concerned".

14. The judge (although incorrectly referring to the EEA regulations as Immigration Rules and allowing the appeal under the Immigration Rules) plainly addressed the correct issues and made findings of fact on the evidence before him.

15. The objections by the respondent are disagreements with the findings of the judge. Those findings were open to the judge on the evidence before him. Another judge may not have reached the same findings but the findings are not unreasonable or perverse or irrational

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision

The decision of the First-tier Tribunal allowing the appeal stands.

Upper Tribunal Judge Coker Date 29th September 2015