Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: DA/00496/2017**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 6 March 2018	**On 13 April 2018**

Before

UPPER TRIBUNAL JUDGE CRAIG
UPPER TRIBUNAL JUDGE RINTOUL

Between

MR EMANUEL OLAF GOMIAK
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Kainth promulgated on 17 November 2017 dismissing his appeal against the decision made by the respondent on 21 July 2017 to deport him from the United Kingdom. The appeal in this case is pursuant to the Immigration (European Economic Area) Regulations 2016 specifically Regulations 23(6)(b) and 27.

2. The appellant was, although this was an appeal certified pursuant to Regulation 33, present at the date of the hearing but we understand from material supplied to the court that he was removed from the United Kingdom on 10 January 2018. He is not present in the United Kingdom. There have been no additional materials supplied by him and we are satisfied from the file that due notice of the time, date and venue of the hearing was supplied to the appellant in accordance with the Rules by service on him at the last address provided to him. In all the circumstances, and bearing in mind that it is the appellant who brings this appeal, we are satisfied that we can act in the interests of justice in proceeding with this decision.

3. The appellant is a citizen of Poland who arrived in the United Kingdom relatively recently, in it appears 2014. His case is that he came here to start a new life given that prior to that his wife and young daughter aged 4 tragically died in a car accident in Poland. He states that as a result he became addicted to amphetamines, cannabis and alcohol which he abused. He later purchased a gun through a friend to take his own life but, having decided not to do so, travelled to the United Kingdom to start a new life.

4. There appears to be no dispute as to his offending history which, in light of the assertion of a recent descent into drug use, is surprising in that he appears to have been convicted of driving whilst under the influence of drink or drugs in 2003, in Poland.

5. Further offences occurred in Poland and finally, on 14 February 2014, he was convicted of possessing a firearm without a certificate. Since his arrival in the United Kingdom he has been convicted of a number of relatively minor offences mainly by way of shoplifting, which he explains in his grounds of appeal as being due to his need to feed his drug habit. The Secretary of State took the view that the appellant did, in light of the threat that he presents, represent a genuine and sufficiently serious threat to public interest, that affecting one of the fundamental interests of society through his persistent offending.

6. The matter came before the First-tier Tribunal on 1 November 2017 and the judge heard evidence from the appellant. The judge directed himself at [23] that the matter fell to be decided in accordance with the EEA Regulations and in light of the relevant case law set out at [25] and [26]. The judge found that the appellant had an unenviable history of offending, had continued to offend and concluded that the potential of reoffending remained such that he presented a genuine, present and sufficiently serious to justify deportation on the grounds of public policy. The judge then also took into account the possibility of drug and alcohol rehabilitation, the position of the appellant's claimed partner who had not been present at the hearing and also considered Article 8 of the European Convention on Human Rights at [34] to [45].

7. The appellant's grounds of challenge fall into two distinct categories. First, is that his position and that of his family was not taken into account; and,

second, that the judge had failed properly to assess the risk of reoffending.

8. Permission to appeal was granted on 12 January 2018 by First-tier Tribunal Judge Grant-Hutchison stating that it is an arguable error of law that:

> "The Judge has misdirected himself in not considering the Appellant's full circumstances in relation to his previous family life, his health and his other facts and circumstances under the 2016 Regulations and under Article 8 of the ECHR."

9. We pause at this point to consider that the judge should not have considered Article 8 of the Human Rights Convention in light of the decision of the Court of Appeal in **Amirteymour v SSHD** [2017] EWCA Civ 353 upholding the decision of that name by the Upper Tribunal and contrary to the express observation in the refusal letter that the sole ground of appeal in this case was that the removal was in breach of the EU treaties.

10. Turning to the first ground, it is averred by the appellant that his wife and daughter had died as said before; second, that he drinks to forget the loss of his wife and daughter and that if he returns to Poland his life will be miserable and he will undergo significant hardship; third, that he engages in criminal activity to manage his drug money and that he drinks to forget and is unable to access rehabilitation, and fourth, that if he returns to Poland, it will be difficult for him to start again, especially as he has no family.

11. We consider, having had regard to the decision that the judge has very clearly taken into account all of these matters as can be seen from paragraphs [14] to [17] and also in the assessment at paragraphs [35] to [42] onwards albeit that these are mentioned specifically in respect of Article 8.

12. Further, it is not immediately apparent that the circumstances of the deaths of the appellant's wife and child, tragic although they are, were matters which go to proportionality, the judge having found that the appellant did meet the trigger of there being a genuine and sufficiently serious threat of his reoffending. There is, we consider, no basis for the challenge on that ground; the judge very clearly took into account all the evidence put before him before reaching an adequately reasoned and sustainable conclusion.

13. Finally, turning to the second ground, that the judge had failed properly to assess the risk of reoffending. We conclude that the judge did consider the risk properly. The judge sets out very properly the history of reoffending and the fact at paragraph 27 that the appellant had failed to comply with orders of the court made to him, that he was convicted of further counts of shoplifting whilst he was subject to a community order and acknowledged that he had been addicted to alcohol and illicit substances. That indeed is the explanation put forward for the appellant's offending behaviour and there is, we consider, no reasonable prospect of the appellant doing

anything other than continuing to reoffend on the basis that he has uncontrolled drug and alcohol problem.

14. In the circumstances the judge was also entitled to consider at paragraph [33] that there was a lack of any evidence of rehabilitative work being taken and that he had not taken any rehabilitative courses.

15. Accordingly, for these reasons we are satisfied that the decision of the First-tier Tribunal was one which was clearly open to the judge, was clearly and sustainably reasoned and did not involve the making of an error of law. We therefore uphold the decision of the First-tier Tribunal

Notice of Decision

1. The decision of the First-tier Tribunal did not involve the making of an error of law and we uphold it.

2. No anonymity direction is made.

Signed Date 6 April 2018

Upper Tribunal Judge Rintoul