



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00112/2015

THE IMMIGRATION ACTS

Heard at Field House
On 7th December 2015

Decision & Reasons Promulgated
On 7th January 2016

Before

Upper Tribunal Judge Gleeson
Deputy Upper Tribunal Judge Rimington
(Immigration and Asylum Chamber)

Between

MR RYTIS SETKUS
(No Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Lithuania born on 30th August 1981. He appeals with permission against the decision of the First-tier Tribunal, dismissing his appeal against the decision of the Secretary of State to make a deportation order against him under Section 3(5)(a) of the Immigration Act 1971 and under the Immigration (European Economic Area) Regulations 2006 (as amended) (The EEA Regulations), specifically Regulation 19(3)(b) and Regulation 21.

2. The appellant came to the United Kingdom, on his own evidence, in late 2013 and lived with relatives, who maintained him. His mother and sister are here.
3. On 15 March 2015, the respondent's decision to remove the appellant from the United Kingdom was based on his criminal history in his country of origin before coming to the United Kingdom, obtained by consulting EURODAC fingerprint records. The Lithuanian records disclosed 11 offences in 6 convictions, between April 1997 and January 2009: two offences against property in 2009, 2 fraud and kindred offences in 2008 and 7 theft and similar offences between 1997 and 2009. As at 25 September 2014, the Lithuanian records showed the appellant to be unemployed. The detail of the appellant's convictions was as follows:
 - a) **9 April 1997:** Convicted of theft on 12 November 1996 at Kaunas City District Court Lithuania, sentenced to imprisonment 2 years 6 months, suspended for 2 years, and asset forfeiture
 - b) **10 December 1997:** Convicted at Kaunas City District Court of burglary and theft from a dwelling on 4 April 1997, sentenced to 4 years' imprisonment, concurrent with April 1997 sentence, asset forfeiture, later reduced to 3 years' imprisonment, and asset forfeiture.
 - c) **13 June 2001:** Convicted at Kaunas Regional Court of robbery on 15 December 2000, sentenced to 6 years' imprisonment and forfeiture of assets. Later varied to revoke asset forfeiture.
 - d) **16 April 2008:** Convicted at Kaunas District Court of theft committed on 13 November 2006, sentenced to 2 years 6 months' imprisonment concurrent with existing sentence.
 - e) **21 April 2008:** Convicted at Kaunas City District Court 2 charges of fraud and 1 of theft committed on 19 October 2006, sentenced to 4 years' imprisonment concurrent on all 3 charges.
 - f) **16 January 2009:** Convicted at Kaunas District Court of theft and destruction or damage to property committed on 9 January 2006, sentenced to 6 years' imprisonment concurrent with the two previous sentences.

It appears from that record that the appellant must have been more in prison than out, from at least 2001, and that during his sentence, he was convicted of further outstanding offences.

Immigration (European Economic Area) Regulations 2006 (as amended)

4. The power to remove an EEA citizen is given in Regulation 19(3) of the Regulations, and so far as relevant to these proceedings is as follows:

'19(3) Subject to paragraphs (4) and (5) a person who has been admitted to, or acquired a right to reside in, the United Kingdom

under these Regulations may be removed from the United Kingdom if ...

(b) he would otherwise be entitled to reside in the United Kingdom under these Regulations but the Secretary of State has decided that his removal is justified on grounds of public policy, public security or public health in accordance with regulation 21.'

5. Regulation 21 identifies three levels of protection, a basic level, available to all EEA citizens exercising Treaty rights in the United Kingdom, who can be removed only on grounds of public policy, public security or public health; an intermediate level of protection, for those who have acquired a permanent right of residence under Regulation 15, by showing that they have resided in the United Kingdom 'in accordance with these Regulations' for a continuous period of 5 years, or a number of other family-related conditions which are not met in this appellant's situation; and finally, an enhanced protection for those with a continuous period of 10 years' residence in the United Kingdom immediately before the decision to remove was taken.
6. The operative provisions of Regulation 21 are as follows:
 - “(1) In this regulation a “relevant decision” means an EEA decision taken on the grounds of public policy, public security or public health. ...
 - (2) A relevant decision may not be taken to serve economic ends. ...
 - (5) Where a relevant decision is taken on grounds of public policy or public security it shall, in addition to complying with the preceding paragraphs of this regulation, be taken in accordance with the following principles—
 - (a) the decision must comply with the principle of proportionality;
 - (b) the decision must be based exclusively on the personal conduct of the person concerned;
 - (c) the personal conduct of the person concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society;
 - (d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;
 - (e) a person's previous criminal convictions do not in themselves justify the decision.
 - (6) Before taking a relevant decision on the grounds of public policy or public security in relation to a person who is resident in the United Kingdom the decision maker must take account of considerations such as the age, state of health, family and economic situation of the

person, the person's length of residence in the United Kingdom, the person's social and cultural integration into the United Kingdom and the extent of the person's links with his country of origin.”

First-tier Tribunal hearing

7. The appellant appeared without representation at the First-tier Tribunal hearing in May 2014 and gave evidence. He confirmed his criminal history, stating that he had been released from prison in Lithuania in mid-2013, on a date he could not precisely recall. In Lithuania, he had worked in construction. He relied on a 1-year relationship with a partner who he stated was Lithuanian, but no evidence was produced from her and no one appeared at court to support the appellant's appeal. He stated that he had his mother and sister, her husband and their two children as family in the United Kingdom. He had not been convicted of any offence while here: he regretted his past offences and would get help from his family. He had been young and stupid and had committed the offences to get money.
8. Since coming to the United Kingdom at the end of 2013, the appellant had lived with his sister for half a year, then moved out to live with his girlfriend, who did not attend the hearing as it was 'too far to travel'. There was no written evidence from her. The appellant had worked 'cash in hand' until early 2015 when he got a job.
9. The threat to public safety was considered to be established as the appellant had resorted to crime repeatedly when short of money and his offences had been committed over a period of 12 years, with no opportunity to commit further offences or show rehabilitation after 2009, the appellant having been released from his 2009-2013 sentence shortly before coming to the United Kingdom.
10. The First-tier Tribunal Judge considered the evidence given, and applied the principles set out under Regulation 21(5) and 21(6). He took account of the personal circumstances of the appellant, who was then 33 years old, in good health, with family in the United Kingdom. The partner was said to be Lithuanian and free to return with the appellant to Lithuania should she choose. There was no evidence that the appellant had worked in the United Kingdom and no evidence of his social and cultural integration here. At [29] the judge recorded that the appellant had family in Lithuania who could support him on his return.
11. The First-tier Tribunal Judge found that although there was no evidence that the appellant had committed further offences since his last conviction, nor was there evidence of his undertaking any available courses to address his offending behaviour. He considered that the decision to deport the appellant was justified to prevent further offending, in other words, on the grounds of public security. Overall the decision to deport the appellant was found to be proportionate and the respondent's

reasons adequate to support her conclusions. His appeal was dismissed on both EEA Regulations and human rights grounds.

Permission to appeal

12. The appellant sought and received permission to appeal to the Upper Tribunal on the basis that it was arguable that the judge did not adequately consider and make reasoned findings under Regulation 21.
13. That was the basis on which the appeal came before us.

Regulation 29AA applications

14. The appellant had been removed to Lithuania before the hearing took place. His removal was not without difficulty: on 27 April 2015, prior to removal on a booked flight, the appellant refused to leave the removal centre, and removal directions were cancelled. His removal was eventually effected on 13 July 2015.
15. Pursuant to Regulation 29AA(3) of the Regulations, the respondent is entitled to refuse re-entry in order to make submissions in person at the hearing to a person (P) who has been removed, 'when P's appearance may cause serious troubles to public policy or public security'.
16. On 4 December 2014, the appellant sought permission to re-enter the United Kingdom: the respondent refused, citing paragraph 29AA(3) reasons. A similar request was made and refused on 7 December 2015, the respondent citing both the appellant's established pattern of reoffending and his previous non-compliance with the removal process: the respondent considered that there was a real risk he would again refuse to comply with restrictions placed upon him for the duration of his stay, should he be readmitted.
17. No application to adjourn was before us and no further evidence or written submissions have been received in respect of Regulation 29AA or these proceedings generally. We considered whether to adjourn the hearing, but as there had been no judicial review challenge to the respondent's decision to refuse entry, and no further submissions or application to adjourn made to the Upper Tribunal, and having regard to the overriding objective, we decided that it was not appropriate to adjourn the hearing of the Tribunal's own motion.
18. We considered that we had sufficient information, having regard to the written grounds of appeal, with which to make a just decision.

Upper Tribunal hearing

19. We have treated the appellant's very full grounds of appeal as his submissions in the appeal. He says he wishes to appeal against the conclusions of fact by the respondent and the First-tier Tribunal, stating that he has not committed any disorder or crime while in the United

Kingdom; that there was no evidence to suggest that he was a threat to public policy, public security or public health, and that his Lithuanian convictions should be disregarded because 'everyone has have right to liberty...to a new life even he has had criminal conviction before'. He regarded the reasons why the respondent wished to deport him as incomprehensible; in Lithuania, he had worked but been unable to survive 'due to minimum income'. He had come to the United Kingdom for employment, registered with the National Insurance in December 2014, and found employment in Peterborough. Evidence could be provided on request. That registration and employment both appear to be post-decision.

20. The appellant stated that 'all his family members' are in the United Kingdom. He did not come here for rehabilitation, but for work. He considered that his removal to Lithuania was a violation of his free movement rights under the EEA Regulations, and Directive 2004/38/EC and 1612/68, concerning the free movement of persons. He agreed that he is healthy and 33 years old. He had been in agency employment since New Year 2015 and his relationship with his mother and sister could not be conducted in the same way by modern methods of communication from Lithuania.
21. In brief, he had registered and worked in the United Kingdom; he had demonstrated good manners due to his family and work aspects; he had paid his expenses and assisted his family also; he had a girlfriend in the United Kingdom and they had a close relationship; he had respected the United Kingdom's law and not breached it; and he 'was attentive person due to mistakes he was made before'. The appellant sought mercy from the United Kingdom, seeing a right to a normal life and to become a respectable person. The crime had been committed 6 years ago and he could not be blamed all his life for that.
22. For the respondent, Mr Avery submitted that the appellant's grounds merely disagreed with the judge's reasoning which was that when not earning money the appellant resorted to acquisitive crime. The appellant had family in Lithuania and his girl friend was Lithuanian. The judge had gone through the relevant factors and had made findings open to him.

Discussion

23. The first question is the level of protection to which this appellant is entitled. He claims to have entered the United Kingdom towards the end of 2013, which is consistent with his having served a reasonable proportion of the final 6-year sentence imposed upon him. The Lithuanian records, disclosed after a fingerprint search by the Lithuanian authorities, show him as having been in prison until sometime in 2013, the year he claimed to have entered the United Kingdom. They also show him as 'unemployed' on 25 September 2014, but that may have been the date of the respondent's fingerprint enquiry.

24. The appellant had therefore been in the United Kingdom for rather less than a year, and perhaps only 6 months, when the respondent decided to remove him to Lithuania, and accordingly he is entitled only to the lowest level of protection, that the decision should be taken on grounds of public policy, public security, or public health, and not for economic ends. The respondent was required to consider the matters identified in Regulation 21(5) and (6) before reaching her decision.
25. The First-tier Tribunal found, and we concur, that the respondent had indeed made her decision on the grounds of public security, making it potentially a lawful decision to remove. At paragraph [25] - [27], the Judge considered the nature and seriousness of the offences committed by the appellant through the length of sentences imposed and that his last sentence was in 2013 for six years for theft, concluding that:
- “27. I find that there is a clear justification in this case for deportation of the appellant, to prevent further offending by him in the United Kingdom. I am also satisfied that his personal conduct represents a genuine present and sufficiently serious threat affecting one of the fundamental interests of society, namely public safety. He has demonstrated that he is prepared to disregard the law and commit acquisitive offences when he needs money.’
26. The First-tier Tribunal applied the relevant EEA Regulations, giving brief but adequate reasons for finding that the appellant presented a present and sufficiently serious threat affecting one of the fundamental interests of society, and that the decision to deport was proportionate. The First-tier Tribunal Judge addressed the elements of the appellant’s claimed family and private life under Article 8 ECHR and found that neither had been evidenced and thus established.
27. We find that the application by the appellant is merely a disagreement with the findings of the First-tier Tribunal Judge. At the date of decision, the appellant had been in the United Kingdom for a very short time, as balanced against a lengthy career of criminality in Lithuania. That was not sufficient to amount to evidence of rehabilitation or to be predictive of his ability to cope financially and remain honest, since he had lived with, and at the expense of, his mother and sister until some time in early 2014. We also note that until late 2014 the appellant worked ‘cash in hand’ and therefore presumably without payment of tax and National Insurance, which is itself an offence, albeit one of which he has not been convicted. He did not begin working ‘on the books’ and paying tax and National Insurance until early 2015, 9 months after the decision to remove, and about 18 months after his arrival in the United Kingdom.
28. Having regard to the paucity of the evidence before him, the First-tier Tribunal Judge was entitled to conclude as he did that nothing in Regulation 21(5) or (6) was such as to render the respondent’s decision to remove the appellant to Lithuania unlawful or disproportionate. We uphold the First-tier Tribunal decision and decline to reopen it.

Decision

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

Signed Judith AJC Gleeson
 Upper Tribunal Judge Gleeson

Date 7th December 2015