



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00365/2016

THE IMMIGRATION ACTS

Heard at Glasgow
on 1 August 2017

Decision & Reasons Promulgated
on 3 August 2017

Before

Mr C M G OCKELTON, VICE PRESIDENT & UT JUDGE MACLEMAN

Between

ATVARS KLAVS

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr J Bryce, Advocate, instructed by Maguire, Solicitors
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. By a decision promulgated on 12 October 2016 First-tier Tribunal Judge McGrade dismissed the appellant's appeal against deportation under the Immigration (EEA) Regulations 2006.
2. The respondent conceded that the decision discloses error of law.
3. At ¶20 the Judge said, "The appellant was convicted of a number of serious offences in Latvia and I consider he therefore poses a genuine, present and sufficiently serious threat to the fundamental interests of society"; but previous convictions do not in themselves constitute grounds for deportation.
4. It was common ground that the decision should be set aside and remade.
5. Although the FtT judge said at ¶2 that the burden was on the appellant, it was also common ground before us that the burden in a case of this type is on the respondent.

6. The appellant is presently in Latvia, having eventually been deported on 10 July 2017.
7. The appellant relied in previous proceedings on the protective effects on the appellant of relationships with his partner and with his older brother. Mr Bryce properly advised us that the appellant's relationship with his partner has ended and that his brother has gone back to live in Latvia. However, we note that Judge McGrade in any event had not accepted that the relationships had any significant protective influence.
8. The record supplied by the respondent shows that the appellant was convicted in Latvia on 4 occasions, from 28 September 2009 to 23 May 2014. He was released from his last sentence on 22 September 2014. Read along with his statement, the last date of offending seems to have prior to or not long after his 18th birthday.
9. The appellant was taken into immigration detention in the UK on 13 July 2016, apparently as the eventual outcome of a random check some months previously of his immigration status.
10. The appellant committed quite serious offences at an early age, but before being taken into detention, he lived and worked in the UK for two years without any criminal offending or any cause for concern over behaviour which might pose a threat to the interests of society.
11. We cannot say that the risk of re-offending is absent, but the recent history shows ability to refrain from offending and to lead a normal working life, suggesting a low risk.
12. We conclude that the respondent has failed to discharge the burden of showing that the appellant poses a genuine, present and sufficiently serious threat to the fundamental interests of society.
13. The decision of the FtT is **set aside**, and the following decision is substituted: the appeal, as originally brought to the FtT, is **allowed**.
14. No anonymity direction has been requested or made.



1 August 2017
Upper Tribunal Judge Macleman