



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: DA/00174/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 12<sup>th</sup> October 2018**

**Decision & Reasons  
Promulgated  
On 31<sup>st</sup> October 2018**

**Before**

**UPPER TRIBUNAL JUDGE FRANCES**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**VIESTURS KAMALDINS  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr N Bramble, Home Office Presenting Officer

For the Respondent: In person

**DECISION AND REASONS**

1. Although this is an appeal by the Secretary of State for the Home Department, I shall refer to the parties as in the First-tier Tribunal. The Appellant is a citizen of Latvia born on 24 April 1980. His appeal against deportation under the Immigration (EEA) Regulations 2016 was allowed by First-tier Tribunal Judge Hawden-Beal on 15 June 2018.
2. The Secretary of State appealed on the grounds that the judge erred in law in considering Regulation 27(5)(e) in isolation and failed to give

adequate consideration to the remaining provisions of Regulation 27 and Schedule 1. The Appellant's deportation was justified and proportionate.

3. Permission to appeal was granted by First-tier Tribunal Judge Hodgkinson on 4 July 2018 for the following reasons: "The grounds argue that the Judge erred as follows: first, in basing her proportionality assessment solely upon Regulation 27(5)(e) of the 2016 Regulations, rather than taking into account that Regulation as a whole, including, but not limited to, the question of risk to the public, his propensity to reoffend and the fact that the Judge concluded that the Appellant continued to represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society; second, when assessing proportionality, in failing to have adequate regard to the provisions of Schedule 1 to the Regulations. The grounds were arguable."

### **Submissions**

4. Mr Bramble submitted that, although the judge set out the relevant provisions in the decision, she adopted the wrong approach in applying Regulation 27 and focused only on sub-paragraph 27(5)(e), the Appellant's previous convictions. The judge referred to Schedule 1 at paragraph 20 and acknowledged that the Appellant's deportation was justified to protect the public and that he was of good character until May 2017. However, the judge failed to take into account that the Appellant was considered to be medium risk to the public, even though there was a low risk of reoffending. There was no evidence that the Appellant had completed any rehabilitation. The judge found that the Respondent had shown that Schedule 1 applied, but the judge had failed to take into account the medium risk of harm and had not fully considered the public interest. She had scant regard to the OASys Report and the public interest in her findings at paragraph 20. The judge had chosen only to focus on the Appellant's previous convictions and had not appropriately dealt with the factors in the context of Regulation 27(5). She had not ignored material facts but had failed to properly apply Regulation 27(5).
5. Mr Kamaldins submitted that his behaviour did not justify a deportation order. Although there was insufficient evidence before the judge to show permanent residence, he did have that evidence to fill the gap in employment identified by the judge. At the time of the appeal he had limited access to documents but he had since prepared all the documents and sent them to court. He had not yet applied for a permanent residence card. He had been living in the UK since 13 December 2009. In relation to the OASys Report he was not offered a rehabilitation course in prison but he has been actively taking part in and working with a probation officer since his release.
6. In response, Mr Bramble submitted that the judge set out the Regulation, but at paragraph 23 of the decision the judge had not properly dealt with the public interest in the assessment of proportionality.

## The judge's findings

7. The judge set out the burden of proof at paragraph 12 stating that it was for the Secretary of State to prove that the person represented a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. The judge set out Schedule 1 at paragraph 13 and Regulation 27(5) at paragraph 14. The judge made the following findings at paragraph 20: "Having considered all the evidence submitted by the Appellant I am satisfied that his deportation is justified to protect the public, maintain public order and prevent social harm. I acknowledge that the Appellant was a person of good character until May 2017 when he suddenly and spectacularly fell from grace. His OASys report at page 14/21 states that he believed carrying the weapons was legal, he carried them as protection against potential attack, he carried the gun so that it could not be found by his nephew, the axe was a useful tool as was the knife which he used at work. He acknowledged that he might have used them if he had been attacked and that he was in drink at the time, having started to use drink heavily after his suspension from work in May 2017 and had used the gun to attract the attention of a friend after he refused to answer the door."
8. The judge rejected the Appellant's explanation for carrying the weapons and concluded that his behaviour was a threat as set out in Schedule 1 to the 2016 Regulations. At paragraphs 23 to 26 the judge stated:
  - "23. Having found that his offending behaviour is a threat to one of the fundamental interests of society under Schedule 1, I have had regard to the case of **ARRANZ** and note that for the Respondent to succeed in discharging her burden of proof, she must also show that the Appellant's personal conduct represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society and the OASys report would appear to support that opinion because when in drink he does present a medium risk to the public and former associates, albeit that his actual risk of re-offending is calculated as low at 8-12%.
  24. Regulation 27(5) makes it clear that an individual's previous convictions do not, in themselves, justify the decision. I have looked at the evidence presented by the Respondent and I cannot see what conduct other than the Appellant's previous convictions justify this decision. There is no evidence from the Appellant to show that he has completed any rehabilitation courses whilst in prison to address the reasons for his offending behaviour. But equally there is no evidence before me to say that such courses were available to him, were offered and were refused by him. The burden is upon the Respondent and I am not satisfied that she has shown, on the balance of probabilities, that

there is conduct other than his previous convictions which justifies the decision to deport him.

25. Under Regulation 27(6) the Respondent is obliged to take into account his age, state of health, family and economic situation, his length of residence in the UK, his social and cultural integration into the UK and the extent of his links (sic) to his country of origin. The Appellant is 38 years old. He has been here he claims since 2009 but the evidence certainly shows he has been here since 2010 and until 2015 he was in full time permanent employment. He took voluntary redundancy in 2015 and claims that having then claimed job seekers allowance and undertaken some qualifications at Leeds City college, he was soon back in work where he remained until May 2017. He has no previous convictions prior to June 2017. I am satisfied that he has established his economic situation and has shown that he was integrated into the UK because, but for the missing 4 months between march (sic) and July 2015, I would have been satisfied that he was entitled to permanent residence here in the UK. However, there is no evidence of his family here in the UK and nothing to say that he has lost all ties to Latvia.
26. In the circumstances, given that there is no conduct other than his previous convictions to justify the decision to deport him, I am satisfied that the decision to deport the Appellant under Regulation 23(6)(b), with reference to Regulation 27(5) and Schedule 1 is not justified and not in accordance with the 2016 Regulations."

### **Discussion and conclusions**

9. On 15 June 2017 the Appellant pleaded guilty to possession of an offensive weapon, possession of a knife/bladed article and possession of an imitation firearm in a public place. He was arrested carrying a sack containing an axe, a penknife and a BB gun. On 31 October 2017 he was sentenced to twelve months' imprisonment. After that conviction he received a conditional discharge for a public order offence.
10. The judge found that the Appellant had not acquired permanent residence and his deportation was justified to protect the public. The Appellant represented a genuine, present and sufficiently serious threat to one of the fundamental interests of society. However, although there was a medium risk of harm to the public, there was a low risk of reoffending. There was no evidence that he had completed an alcohol awareness course, the offence having been committed whilst he was drunk. The judge concluded that the Respondent had failed to show reasons other than the Appellant's previous convictions justifying his deportation and therefore the decision to deport was not in accordance with the 2016 Regulations.

11. The decision is challenged on the basis that the judge focused on Regulation 27(5)(e), which states: “a person’s previous criminal convictions do not in themselves justify the decision”, and in doing so she failed to consider other relevant information in the OASys Report, namely that the Appellant was of medium risk to the public. This was relevant to Regulation 27(5)(f) which states “the decision may be taken on preventative grounds even in the absence of a previous criminal conviction provided that the grounds are specific to the person.”
12. I find that the judge did consider the OASys Report and the medium risk of harm to the public and she specifically referred to that issue at paragraphs 20 and 23. She did take into account the risk factor in addition to considering the Appellant’s previous convictions and this factor was relevant to her assessment of proportionality. She also set out Schedule 1 in full and properly applied it at paragraph 23, where she found that the Appellant’s behaviour came within Schedule 1, such that it was a threat to one of the fundamental interests of society. There was no error of law in the judge’s decision as submitted in the grounds.
13. Mr Bramble submits that, because the judge failed to consider the medium risk of harm to the public, she failed to attach proper weight to the public interest and her assessment of proportionality was flawed.
14. I am satisfied, on reading the decision as a whole, that the judge properly applied Regulation 27(5) and considered all factors relevant to sub-paragraphs (a) to (f) therein. She took into account Schedule 1 and properly applied it to the facts of the case. Her finding that the Respondent had failed to show that the Appellant’s conduct other than his previous convictions justified the decision to deport him was open to her on the evidence before her.
15. I find that there was no error of law in the decision of 15 June 2018 and I dismiss the Respondent’s appeal.

**Notice of Decision**

**Appeal dismissed**

**No anonymity direction is made.**

**J Frances**

Signed

Date 26 October 2018

Upper Tribunal Judge Frances