



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

Appeal Number: DA/00092/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 9th July 2019**

**Decision & Reasons Promulgated
On 17th July 2019**

Before

**THE HONOURABLE MRS JUSTICE CUTTS
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE BLUM**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR ARMANDS JUSKOVS
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

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

For the Respondent: No attendance

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department (SSHD) against the decision of Judge of the First-tier Tribunal Row (the judge) promulgated on 2nd May 2019 allowing the appeal of Mr Armands Juskovs, a national of Latvia, against the decision of the SSHD to deport him pursuant to the Immigration (European Economic Area) Regulations 2016 (the 2016 Regulations).

2. The claimant was born in 1980 and arrived in the UK in 2015. According to the judge's decision he worked for an agency at various times since his arrival. The claimant has brothers and a sister in the UK although his mother and other siblings still reside in Latvia.
3. The claimant has been convicted of several offences since his arrival in the UK. These are detailed in the judge's decision at paragraphs 12 and 13. The offences included being drunk and disorderly in a public place, for which he was convicted on several occasions. He was also convicted of assaulting two police officers in April 2018 for which he received a fine and had to pay compensation. He has also received a caution for theft. Although charges in respect of an allegation of assault on his (Latvian) partner's 20-year-old daughter were dismissed a restraining order was imposed on the claimant preventing him from contacting a named person until 31 July 2019. It is readily apparent that the claimant is a persistent offender who has committed a number of relatively minor offences within a short space of time.
4. The SSHD decided to deport the claimant on grounds of public policy in accordance with regulation 23(6)(b) and regulation 27 of the 2016 Regulations being satisfied that the claimant posed a real, present and sufficiently serious threat affecting one of the fundamental interests of society and that it was proportionate to deport him.

The First-tier Tribunal decision

5. At the appeal hearing on 26th April 2019 the judge heard evidence from both the claimant and his brother Janis. The judge's assessment of the evidence is contained from paragraph 10 onwards. The judge found that the claimant's offending was associated with alcohol abuse and, at paragraph 14, noted the claimant's acceptance that he was still probably an alcoholic. At paragraph 15 the judge noted that the claimant had "obviously been sober whilst in custody since 1 February 2019." The claimant was well-behaved in custody and had attended various classes. He had been informed that his alcohol abuse had damaged his liver. The claimant had resolved not to drink again.
6. The judge then observed that the claimant did not have a permanent right of residence and summarised the legislative framework under governing the deportation of EEA nationals. At paragraph 19 the judge stated:

"The fundamental interests of society include those matters listed in paragraph 7 of Schedule 1 of the EEA Regulations and include the maintenance of public order, preventing social harm, combating the effects of persistent offending, particularly offences which might otherwise be unlikely to meet the requirements of Regulation 27, protecting the rights and freedoms of others, and protecting the public."
7. At paragraph 20, the judge observed that, whilst the applicant's offences were unpleasant, they were not of the most serious type (the Reasons for

Refusal Letter claimed the applicant had committed “serious criminal offences”). The judge then stated: “Nonetheless they clearly come within the scope of those matters listed in paragraph 7 of Schedule 1.” It was noted at paragraph 21 that, if the claimant was an alcoholic on 1st February 2019, he was unlikely to be otherwise at the date of the hearing. The judge additionally acknowledged that repeated fines, cautions and court appearances had failed to deter the claimant.

8. At paragraph 22 the judge took into account the provisions of Regulation 27(6) of the 2016 Regulations. He noted that the claimant would have established social and cultural links in the UK having arrived in 2015 and having family members living here. These links had however been established around the same time that his offences, affected the fundamental interests of society, were committed. The judge accordingly reduced the weight he attached to those links. In paragraph 23 the judge stated:

“On the other hand the [claimant] has been in employment for at least some of the time since he came to the United Kingdom. There are signs of improvement in his behaviour. He has behaved well in prison. He has attended various courses. He has sought to improve his English. He has at least recognised the problems that his alcohol addiction has caused him. He has sought medical advice. He has indicated an intention to stop drinking. He has been in prison for nearly three months and this has focused his attention on his lifestyle.”

9. At paragraph 24 the judge explained why he found that the claimant’s brother gave “convincing evidence.” The brother said he intended to employ the claimant in his business, that he had made contact with various alcohol addiction groups in the area, and that if the claimant was allowed to remain in the UK he would ensure that the claimant attends these groups. The claimant’s brother had a clear awareness of the problem. The judge bore in mind that none of the offences for which the claimant had been convicted would of themselves justify his deportation and noted that the claimant was in the United Kingdom not with leave but as of right under the EEA Regulations and that this put him in a stronger position. The judge found that the claimant had indicated a willingness to reform and had taken positive steps to do so.
10. The judge’s conclusion is brief. At paragraph 25 he stated: “The matter is closely balanced but taking all these matters into account I do not find that at present the decision to deport the claimant is proportionate. The appeal is therefore allowed.”

The challenge to the judge’s decision and the ‘error of law’ hearing

11. The grounds of appeal took issue with the judge’s approach to the claimant’s offending. It was contended by the SSHD that the judge minimised that offending, with particular reference to the assaults on the police officers. As the judge found the offences were repeated and regular the claimant was highly likely to reoffend and therefore posed an ongoing

threat to the fundamental interests of society, with particular reference to those set out in Schedule 1(7)(h) of the 2016 Regulations. The judge's finding that the claimant behaved well in detention was not determinative that he would not return to drinking, and the claimant's resolve not to drink again remained untested in the community where alcohol was freely available. The judge failed to give adequate reasons for finding that the expulsion was not justified and he failed to have regard to Schedule 1, paragraph 7 of the 2016 Regulations.

12. Permission was granted by the First-tier Tribunal on the basis that the judge failed to refer either directly or indirectly to the provisions of Schedule 1 of the 2016 Regulations and in particular paragraph 7(h) which relates to persistent offending.
13. A skeleton argument produced on behalf of the SSHD focused on the persistence of offending and argued that the judge was not entitled to conclude that the claimant's removal was disproportionate.
14. There has been no attendance by the claimant or any representative on his behalf. We were satisfied that the claimant was made aware by lawful service of the time and place and date of the hearing and we proceeded to hear the appeal in his absence pursuant to rules 2 and 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
15. Mr Avery accepted that the judge did make reference to paragraph 7 of Schedule 1 of the 2016 Regulations, contrary to the observation in the grant of permission, but he submitted that the judge failed to adequately engage with those provisions. Mr Avery also took issue with the judge's statement that the claimant was in the United Kingdom as of right and that this put him in a stronger position. Mr Avery submitted that people had the right not to be assaulted and that the judge's assessment of the proportionality of the claimant's deportation was inadequate.

Discussion

16. We have decided to dismiss the SSHD's appeal. We are satisfied that the judge's decision was one rationally open to him on the evidence before him and for the reasons given. Mr Avery's submission relating to finding by the judge that the claimant was in the UK as of right under the 2016 Regulations was not one raised in the grounds of appeal or in the skeleton argument prepared for the error of law appeal. We note further from the judge's decision that the claimant had worked in the UK and there was no indication that the Presenting Officer in the First-tier Tribunal ever argued that the claimant was not a person exercising Treaty rights. On the evidence before him the judge was entitled to find that the claimant was present in the UK as of right.
17. Contrary to the grounds and the grant of permission we find that the judge had adequate regard to paragraph 7 of Schedule 1 of the 2016

Regulations concerning the public interest in removing persistent offenders. The judge made express reference to the effects of persistent offending at paragraph 19 of his decision and then indicated at paragraph 20 that the specific offences committed by the claimant fell within the scope of the matters listed in paragraph 7 of Schedule 1. The fact that the claimant was a persistent offender was not lost on the judge. Reading the decision as a whole we are satisfied that he had this firmly in mind in determining the issue of proportionality. Nor has the judge erred in law in his assessment of the nature and seriousness of the claimant's offending. The judge was demonstrably aware of the totality of the claimant's offending and conduct (see paragraphs 12 and 13) and he was entitled to conclude that the assault on two Police Officers was not of the most serious type given that the claimant received a relatively small fine and compensation order for the offences rather than any custodial sentence.

18. We can discern no error of logic or unlawfulness in the judge's assessment that, on the one hand, the claimant was likely to remain an alcoholic but, on the other hand, that matters have progressed such as to render his deportation disproportionate. At paragraphs 23 and 24 the judge gave several cogent and legally sustainable reasons for his conclusion on proportionality. These include the fact that the claimant had sought medical advice, that his period in custody had focused his attention on his lifestyle, that his brother had contacted various alcohol addiction groups and would ensure that the claimant attended these groups, and that the brother would employ the claimant in his business. The judge balanced the persistence of the claimant's offending and the alcoholism rooted as its cause with the evidence that the claimant had made genuine progress and had taken positive steps to reform. These findings must be considered in the round with the judge's other findings that the claimant had worked in the UK and that he had established relationships here with his siblings.
19. We accept that another judge may have reached a different conclusion on the facts. We do not however find that the judge failed to take into account relevant factors or that the judge misdirected himself in law. The conclusion he reached was one reasonably open to him for the reasons given. In these circumstances we find there is no error of law requiring the decision to be set aside and we dismiss the Secretary of State's appeal.

Notice of Decision

The appeal is dismissed

No anonymity direction is made.

D. Blum

12 July 2019

Signed

Date

Upper Tribunal Judge Blum