



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

Appeal Number: DA/00303/2019

THE IMMIGRATION ACTS

Heard at: Manchester Civil Justice Centre **Decision & Reasons Promulgated**

On: 22nd October 2019

On: 24th October 2019

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

Appellant

and

**Leonard [M]
(no anonymity direction made)**

Respondent

For the Appellant: Mr McVeety, Senior Home Office Presenting Officer
For the Respondent: Ms Philips, Counsel instructed by Owens Stevens Solicitors

DECISION AND REASONS

1. The Respondent is a national of Lithuania born in 1975. On the 6th August 2019 the First-tier Tribunal (Judge Thorne) allowed his appeal against deportation under the Immigration (European Economic Area) Regulations 2016. The Secretary of State now has permission to appeal against that decision.
2. The facts of this case are that the Respondent was for many years a habitual drug user in his native Lithuania. Between 1996 and 2011 he was

convicted on six separate occasions of offences arising from his drug use. The first, in 1996 when he was 21, was a robbery. The second, also in 1996, was a breach of the peace. In 2003 he was convicted of possession of drugs with intent to supply. All of the remaining, more recent, offences were for possession of drugs for personal use: in 2007, 2009 and 2011. I am told the drug in question was amphetamine, categorized in the United Kingdom as a Class B drug. Although nothing turns on it for the purpose of my decision, it is worth noting the contrast between the sentence that this offence would attract in the United Kingdom and those actually imposed upon the Respondent by the Lithuanian authorities. The Sentencing Council indicate that although the statute provides for a maximum sentence of five years, the starting point for possession of a Class B drug would be a fine, with a sentencing range of anything between a discharge and 26 weeks' imprisonment¹. For the three offences committed by the Respondent Lithuanian courts imposed successive sentences on the Respondent of 7 years 6 months, 8 years and 9 years in prison.

3. The Respondent moved to the United Kingdom after his release from prison in 2018. Here he has a wife and a young baby. He has worked since he arrived, as has his Lithuanian wife. On the 10th November 2018 the Respondent was convicted of driving with excess alcohol and sentenced to a community order. It was this conviction which prompted the Secretary of State to take action to deport him.
4. When the matter came before Judge Thorne he heard live evidence from both the Respondent and his wife. Having heard that evidence he accepted that the Respondent is no longer a user of drugs; that the incident in which he drove after consuming alcohol was a one-off, occurring on the night he was celebrating his discovery that his wife was expecting their first child, that the Respondent is now a law abiding citizen and committed family man. Finding that he posed no risk to the public or any of the fundamental interests of society, Judge Thorne allowed his appeal.
5. The ground upon which permission was granted is that the First-tier Tribunal made a "material misdirection in law". Asked to be more specific about what the misdirection might have been, Mr McVeety explained that this was a reasons challenge. The Secretary of State therefore submits that the decision of the First-tier Tribunal is flawed for a want of clear reasons. The grounds particularly take issue with Judge Thorne's alleged failure to explain why he accepted that the Respondent was rehabilitated, and his use of the word 'old' to describe his convictions.

My Findings

6. It is not an error of law to believe a witness. Both the Respondent and his wife gave oral evidence and were cross examined. Having heard that evidence Judge Thorne was tasked with determining whether he believed

¹ <https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/possession-of-a-controlled-drug/>

it or not, and if he did what weight could be attached to it. Weight is classically a matter for the judge. As it happens Judge Thorne was prepared to attach significant weight to the evidence of both witnesses. Mr McVeety accepted that in the absence of perversity, this was a matter for him.

7. As to the 'reasons challenge' I am not satisfied that the Secretary of State can be left in the dark about why Judge Thorne found as he did. Paragraphs 24-30 set out a number of reasons for the decision. The drug convictions *were* relatively old – the last one arose from events in 2011. There was no evidence that the Respondent has used amphetamines, or any other banned narcotic substance, since then. Whilst recognising the seriousness of the offence, Judge Thorne accepted that the drink-driving arose from an exceptional circumstances and was a one-off. There have been no other offences in the United Kingdom. He found that the Respondent had embarked on a 'new life' as a family man in the United Kingdom. The Respondent and his wife gave consistent evidence about all of that. The Judge found that the relationships within the new family unit were a 'protective factor' and there was a low risk of reoffending.
8. The author of the grounds repeatedly refers to the extraordinary length of the sentences imposed on the Respondent in the past, but it is perfectly clear from the decision that the First-tier Tribunal was aware of those facts: they are set out at the beginning of the determination. The Secretary of State cannot simply point to those convictions, or the sentences, to establish that the Respondent poses a genuine, present and sufficiently serious risk to society in the United Kingdom today. On the facts presented, the First-tier Tribunal was rationally entitled to conclude that that burden had not been discharged.

Decisions

9. The determination of the First-tier Tribunal contains no error of law.
10. There is no order for anonymity.

Upper Tribunal Judge Bruce
22nd October 2019