Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00426/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7th December 2018	**On 28th January 2019**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR A P
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr C Avery, Home Office Presenting Officer
For the Respondent: Dr A Van Dellen of Counsel, Goldsmith Chambers

DECISION AND REASONS

The Secretary of State appeals with permission the decision of First-tier Tribunal Judge Woolley promulgated on 20 September 2018. Although the Secretary of State is the appellant, for the purposes of this decision I will refer to the parties as they were before the First-tier Tribunal with AP as the appellant, and the Secretary of State as the respondent.

The appellant's appeal against deportation under the Immigration (European Economic Area) Regulations 2016 (the "2016 Regulations") was allowed by the First-tier Tribunal on the basis that his deportation from the United Kingdom

would be disproportionate, despite the finding that he posed a genuine, present and sufficiently serious threat in accordance with Regulation 25 of the 2016 Regulations. The decision of the First-tier Tribunal proceeded on the basis, as was accepted by the respondent, that the appellant had acquired permanent residence and therefore there had to be serious grounds of public policy and public security pursuant to Regulation 27(3) of the 2016 Regulations.

The First-tier Tribunal found, in paragraphs 22 to 28 of the decision, a genuine, present and sufficiently serious threat by reference, inter alia, to the seriousness of the appellant's offence for which he received a 42-month sentence of imprisonment for causing death by dangerous driving. Having set out the relevant legal provisions in paragraph 22 of the decision, it is useful to set out the findings in full as follows:

> *"23. The appellant was sentenced to a period of 42 months imprisonment for an offence of causing death by dangerous driving. This is a lengthy period of imprisonment and Paragraph 3 of Schedule 1 indicates the weight to be given to this. The comments of the sentencing judge are recorded at Section B of the respondent's bundle. The learned recorder referred to the Victim Impact Statements from the victim's family (and a similar statement was made available to me) and commented on the devastating effects of the offence. The appellant made a poor and selfish decision to get into his car and drive at double the speed limit of 30 miles per hour with excess alcohol in his blood of nearly double the limit. Further details of the offence are given in the OASYS document (it is not a full OASYS report but appears to be a preliminary assessment only). At the point of the offence the appellant had accumulated 9 points for speeding on his licence. He failed to give a satisfactory breath specimen and was seen to place his tongue over the mouthpiece thus to prevent any accurate reading from being made. CCTV footage shows that one hour before the incident he was seen at a Service Station to purchase a bottle of whiskey.*
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> *24. The OASYS "assessment" does not give any assessment of risk of re-offending or any risk of harm. There is a "screening" section at page 11 which shows no risk on a limited number of issues (such as self-harm or risk to other prisoners) but which does not give a generalised risk assessment. In this context the authority of Vasconcelos (risk – rehabilitation) [2013] UKUT 00378 (IAC) suggest that the tribunal should reach a conclusion on the evidence as a whole, and informed by those matters listed in Regulation 27 of the 2016 Regulations.*
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> *25. I have therefore also looked at the behaviour of the appellant before and since the offence, and the other matters mandated by Schedule 1 of the Regulations. The index offence was preceded by offences of speeding sufficient for him to accumulate 9 penalty points. The index offence itself comprised*

speeding at double the speed limit which shows a continuation of this poor driving record. The appellant at the hearing said that a friend had been visiting him from Lithuania and that the friend has suggested a drink. The OASYS version of events goes against this, as the appellant was seen by CCTV to purchase the bottle by himself an hour before the incident. The fact that the drinking took place in the early morning militates against the suggestion that this was purely social drinking. The appellant clearly consumed a large quantity of alcohol (he was nearly double the limit) and he cannot blame this on his friend's invitation to drink since he must have himself drunk willingly. The OASYS report suggests a further aggravation in that he attempted to frustrate the breath reading by giving a flawed sample.

26. Taking a holistic assessment of all the factors I find his conduct can be described as representing a sufficiently serious threat affecting one of the fundamental interests of society. He has shown an escalating pattern of road traffic offending that culminated in the death of his victim. The fact that he was prepared to drive a vehicle knowing he had been drinking heavily shows a fundamental lack of insight which constitutes a continuing threat. He attempted to frustrate detection by providing a false sample. I must under the Regulations take note of Schedule 1 of the Regulations and personal factors mentioned in paragraph 3 are relevant to this appellant – the fact that he received a custodial sentence and that this was a lengthy custodial sentence.

27. … On all the evidence, taken in the round, I find that the appellant has been shown to have a propensity to re-offend and that he does represent an unacceptably high risk of re-offending. He is a "present threat" to the fundamental interests of society. The fundamental interests of society, as defined by Schedule 1, I find are engaged: include the removal of an EEA national with a conviction (7(f)), preventing social harm (7(c)), and protecting the public (7(j)).

28. The appellant has a right of permanent residence and therefore irrelevant decision must be taken on "serious" grounds of public policy. The appellant's offence resulted in the death of his victim. This death continues to have devastating consequences on the victim's family, as their Personal Statement revealed. I find from this that serious grounds be made out in the appellant's case. On this basis I find that the Respondent was correct to decide that the Appellant's removal was justified on "serious" grounds of public policy, public security or public health because the Appellant's conduct represent a genuine, present and sufficiently serious threat to one of the fundamental interests of society."

There is no complaint by the respondent to this first part of the decision dealing with the question of whether the appellant posed a genuine, present and sufficiently serious threat. Nor was there any application to cross-appeal these findings by the appellant.

The respondent appeals in relation to the proportionality assessment conducted by the First-tier Tribunal which follows the section above, in particular with emphasis placed on the first ground of appeal that there are factors adverse to the appellant which are far too limited in the context of the facts and do not attach appropriate weight or give credence to the factors adverse to the appellant on the whole. The factors adverse to the appellant in the assessment of proportionality are set out in totality in paragraphs 31 and 32 of the decision as follows:

> *"31. The appellant has appeared in the Crown Court for an offence of causing death by dangerous driving. He had previously accumulated 9 points for speeding. In his favour he pleaded guilty to the count in the Crown Court and thereby received a reduction from the starting point of 5 years imprisonment. He does not appear to have any other previous court appearances.*
>
> *32. The appellant has undergone a lengthy period of imprisonment (42 months) which has damaged his integration into the UK. There has been an escalating pattern to his offending."*

There is no express reference in those paragraphs back to the earlier findings that the appellant poses an unacceptably high risk to the public and that there are serious grounds of public policy and public security showing that his conduct represents a genuine, present and sufficiently serious threat to the fundamental interests of society. The nature of the offence has to be remembered at this point. These factors are nowhere to be seen within the proportionality factors set out as adverse to the appellant by the First-tier Tribunal.

I am invited on behalf of the appellant to find that the decision should be read as a whole and the earlier findings as to genuine, present and sufficiently serious threat are carried through in to the proportionality assessment. However, I do not find that it can be read in that way, even looking at the decision as a whole, when the First-tier Tribunal has clearly adopted a balance sheet approach but these factors are not referred to expressly or at all. The first ground of appeal, therefore, that there has not been sufficient recognition of the weight of the factors adverse to the appellant is therefore allowed. The proportionality exercise conducted by the First-tier Tribunal begins without the scales correctly weighted on both sides.

The second ground of appeal is in relation to the First-tier Tribunal's assessment of rehabilitation as part of the proportionality assessment. Paragraph 35 of the decision deals with reference to three decisions dating back to 2012, those are Essa v Upper Tribunal [2012] EWCA Civ 1718; Essa

(EEA: rehabilitation/integration) [2013] KUT 0016 (IAC) and MC (Essa principles recast) Portugal [2015] UKUT 00520. Although there is some complaint by the respondent as to why the earlier cases are included, there is no obvious error of law following from their reference, it just appears a little odd to unnecessarily do so when MC covers the points sufficiently.

The remainder of paragraph 5 sets out the reasons why the First-tier Tribunal did not consider that rehabilitation was complete and the Respondent challenges whether there has been any progress in rehabilitation at all, for the reasons given by the First-tier Tribunal. The decision refers to only one awareness course undertaken by the appellant and about which Counsel was unable to identify any evidence explaining precisely what that course was beyond the certificate in the bundle which is for an "alcohol in-cell work pack" in November 2017. Further, in his evidence the appellant still appeared to show some level of blame by one of his friends for the offence despite showing also remorse and pleading guilty to the offence. The respondent submitted that these factors also have to be considered in the balance.

The First-tier Tribunal's decision provides a lack of reasons as to the progress of rehabilitation and a lack of evidence and reasoning as to what has happened after prison as well. In particular, the last findings in paragraph 35 that the appellant's prospects of rehabilitation would be less in Lithuania because he has no family or other support network that he could rely on to the same extent, if at all. The reasoning for this is that the appellant's mother is poor and is likely to want to support herself and has no contact with his father. This reasoning borders on the perverse. There is an attempt at a qualitative assessment of the relative prospects of rehabilitation in the United Kingdom with family ties and support here as against what would be available in Lithuania, however the reasons given as to why the prospects would be less in Lithuania, particularly with reference to the appellant's mother's situation bears no obvious evidential basis or relevance to the rehabilitation assessment. The First-tier Tribunal has also materially erred in law in its assessment of rehabilitation, in the least because inadequate reasons are provided for the findings made which, as I say, in the end of the paragraph, are bordering on the perverse. The assessment of rehabilitation is in any event part of the assessment of proportionality and therefore forms part of the wider first ground of appeal in which an error of law has already been found.

The remaining grounds of appeal which were not pursued in any detail orally before me on behalf of the respondent were in relation to the relative links of the appellant in Lithuania and querying the best interests of the children given the age of the children. I find no specific errors of law in the way that the First-tier Tribunal has dealt with the family relationships and links in the United Kingdom or the best interests of the children in paragraph 34 of the decision, and no obvious errors in paragraph 36 as to the relative links to Lithuania compared to the United Kingdom. These two grounds disclose no further error of law, however, given the errors in relation to the assessment of proportionality for failing to take into account the full facts which are adverse to the appellant and in relation to the approach to rehabilitation. These are errors of law which materially affect the outcome of the appeal and it is

therefore necessary to set aside the decision of the First-tier Tribunal. There was no challenge by either party to the findings in relation to whether the appellant posed a genuine, present and sufficiently serious threat in paragraphs 22 to 28 of the First-tier Tribunal's decision, as set out above, and those findings are therefore preserved for the purposes of remaking the appeal. Similarly, there was no challenge by either party to the findings in paragraphs 33, 34 and 36 of the decision which are also therefore preserved.

This decision was given orally at the hearing, and the parties went on to make submissions for the remaking of the appeal as follows.

On behalf of the appellant, Counsel accepted the factors adverse to the appellant in the proportionality exercise as contained in the error of law part of the decision. The First-tier Tribunal noted that there were no aggravating factors to the offence and the appellant pleaded guilty to it, which fortifies the remorse expressed by him. The five-year starting point for a custodial sentence was accordingly reduced. This is not a drugs or sexual offence, albeit Counsel did not diminish the loss of life caused by it.

Counsel submitted that the description of the appellant showing an escalating pattern of behaviour was slightly old, given that there was not a natural progression from speeding to an offensive death by dangerous driving and is not the typical pattern of escalation, for example, in drugs offences from possession to dealing or offences involving a higher class of drugs.

As to the factors in the appellant's favour, emphasis was placed on the powerful factor of the appellant's children, three of whom are British Citizens and all of whom he has a parental (even if not biological) relationship with, as set out in paragraph 34 of the First-tier Tribunal's decision. In addition, reliance was placed on the findings in paragraph 36 of the First-tier Tribunal's decision, in particular, that the appellant has spent the majority of his adult life in the United Kingdom, with a continuous work history here and only weak links remaining to Lithuania. For these reasons it was submitted that there was a weaker prospect of rehabilitation in Lithuania than in the United Kingdom, but it was not suggested that rehabilitation was complete and therefore this is a factor which can be taken into account. The further rehabilitation anticipated was said to be the appellant not committing any further offences and his ban from driving acted as a powerful deterrent in doing so. Other protective factors are contact with his family and children which reinforces his integration into society.

Since his release from prison on 23 October 2018, the appellant was said to have resumed employment, and as agreed at the oral hearing, evidence of the payslips was submitted within seven days to show this.

In addition, the Applicant has submitted two letters from the National Probation Service, both dated 17 December 2018. No application has been made to adduce this further evidence and no reasons given for its submission at this stage. However, I admit these documents which confirm the Applicant's release from prison on 23 October 2018, following which he has complied with

his licence conditions. The letters state that the Applicant was unable to live with his family until they moved to a new home outside of an exclusion zone and employment plans were submitted for prior approval. The Applicant has shown a willingness to engage in offence focused work, including a provisional meeting with the Restorative Justice team in the hopes of a future meeting with the victim's family. The second letter identifies the Applicant as posing a medium risk to the public due to his driving conviction and a low risk to all other groups, and a relatively low risk of reoffending due to the Applicant having learnt the potentially tragic consequences of drink-driving and protective factors including his family, accommodation and employment that have enabled him to resettle successfully into the community. It is said that the Applicant has addressed and managed his risk factors including alcohol misuse and consequential thinking.

It has not been suggested by the appellant that this evidence as to risk of reoffending and risk of harm in any way affects the findings of the First-tier Tribunal which were preserved in the oral part of this decision given at the hearing. There remains no full OASys assessment before the Tribunal and I do not find that the assessment of risk set out in the recent letter undermines or in any way affects the First-tier Tribunal's findings that the appellant poses an unacceptably high risk of reoffending and that he presents a genuine and sufficiently serious threat to public policy and public security.

On behalf of the appellant it was accepted that his offence was not a minor offence, it was serious, but given his very strong links to the United Kingdom and his family relationships, in particular, with his children, are such that his deportation would be a disproportionate decision.

On behalf of the respondent, Mr Avery relied on the original reasons for deportation decision and the findings of the First-tier Tribunal as to the appellant posing an unacceptably high risk of reoffending and being a genuine, present and sufficiently serious threat if he remained in the United Kingdom. The nature of the offence committed was emphasised, in which the actions of the appellant caused the death of an innocent individual, which has a continuing impact on the victim's family as evidenced in the Victim Impact Statements.

As to the appellant's family in the United Kingdom who would be affected by his deportation, it was submitted that it would be a choice for them as to whether to join him in Lithuania or stay in the United Kingdom. It is an inevitable consequence in the nature of a deportation decision that there is an adverse impact on family members.

Overall, on behalf of the respondent it was submitted that there is nothing in the positive factors in favour of the appellant, even taken cumulatively, to outweigh the impact of his offence and the threat to the public in the United Kingdom. There is a lack of evidence of engagement in rehabilitation and it was submitted that it is not encouraging that the appellant has continued to attempt to shift the blame for his offence to another. The single course undertaken in prison provides only flimsy evidence of rehabilitation and there

is nothing ongoing. It was suggested that the impact of family support on the appellant is unclear in this case and it can be assumed that there are options for rehabilitation also available in Lithuania where the appellant has some links, including his mother, where he still speaks the language and where he has a cultural awareness. In this case the appellant's deportation is not disproportionate.

Findings

As already set out above, there is a preserved finding of fact in this case that the appellant poses an unacceptably high risk of reoffending and that he poses a genuine, present and sufficiently serious threat to public policy and public security on serious grounds, in accordance with Regulation 24 and 27(3) and (5)(c) of the 2016 Regulations. The remaining issue to determine is as to the whether the appellant's removal would be disproportionate. The relevant other provisions of Regulation 27 of the 2016 Regulations are as follows:

> *"(5) The public policy and public security requirements of the United Kingdom include restricting rights otherwise conferred by these Regulations in order to protect the fundamental interests of society, and where a relevant decision is taken grounds of public policy or public security it must also 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 must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, taking into account past conduct of the person and that the threat does not need to be imminent;*
>
> *(d) matters isolated from the particulars of the case 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;*
>
> *(f) the decision may be taken on preventative grounds, even in the absence of a previous criminal conviction, provided the grounds of specific to the person.*
>
> *(6) before taking a relevant decision of the grounds of public policy or public security in relation to a person ("P") 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 P, P's length of residence in the United Kingdom, P's social and cultural integration into the United Kingdom and the extent of P's links with P's country of origin.*

…

(8) a court or tribunal considering whether the requirements of this regulation are met must (in particular) have regard to the considerations contained in Schedule 1 (considerations of public policy, public security and the fundamental interests of society etc).”

There is no dispute in this case that at least one of the fundamental interests of society is engaged, as found by the First-tier Tribunal and not challenged by either party before me. The remaining provisions of Schedule 1 so far as relevant to the present appeal are as follows:

“2. An EEA national or the family member of an EEA national having extensive familial and societal links with persons of the same nationality or language does not amount integration in the United Kingdom; the significant degree of wider cultural and social integration must be present before a person may be regarded as integrated in the United Kingdom.

3. Where an EEA national or the family member of an EEA national has received a custodial sentence, was a persistent offender, the longer the sentence, all the more numerous the convictions, the greater the likelihood that the individual’s continued presence in the United Kingdom represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

4. Little weight is to be attached to the integration of an EEA national on family member of an EEA national with in the United Kingdom if the alleged integrating links were formed at around the same time as –

(g) the commission of a criminal offence;

(h) an act otherwise affecting the fundamental interests of society;

(i) the EEA national or family member of an EEA national was in custody.

5. The removal from the United Kingdom of an EEA national or the family member of an EEA national who is able to provide substantive evidence of not demonstrating a threat (for example, through demonstrating that the EEA national or the family member of an EEA national has successfully performed or rehabilitated) is less likely to be proportionate.”

In applying these factors I turn to consider the appellant’s circumstances for the purposes of the proportionality exercise, starting with the additional preserved findings of fact in paragraphs 33, 34 and 36 of the First-tier Tribunal, as follows:

“33. I accept that the appellant arrived legally in the UK in 2010 and that he was continuously in work from August 2011.

His behaviour in the UK was blameless until January 2017 apart from the accumulation of 9 penalty points for speeding.

34. The appellant has a long-term partner in the UK. She is from Lithuania and I note the restrictions of paragraph 2 of Schedule 1 that the link with a person of the same nationality does not amount to integration in the UK. The appellant has however shown more than this. He is a step-father to two children, one of whom is a British citizen. The father of this step-child is not in contact and I accept that the appellant has taken over the role of parent. He has two twin children of his own. Although they are still young both are British citizens. It is said that the relationship can be carried on from Lithuania but I find that with very young children the physical presence of the appellant as father cannot be substituted for a remote telephonic link. The best interests of the children under Section 55 of the Borders, Citizenship and Immigration Act 2009 are for the appellant to remain in the UK – and as three of the children British citizens they are entitled to enjoy the advantages of that citizenship rather than being expected to move to Lithuania. The appellant has acquired a right of permanent residence which has not been taken away by his incarceration and this in itself is an indication of his integration. He has a continuous work history which again shows social and cultural integration.

…

36. The appellant has now been in the UK for a considerable period of time (since August 2010) and has spent the majority of his adult life in this country. I accept that he has some links to Lithuania through his mother, but he has now lost contact with his father. I find that his own personal links to Lithuania are now weak."

To these matters I would add the following additional findings. In relation to family life, the appellant's relationship with his partner and parental relationship have been accepted and the appellant's evidence is that they are now living together as a family unit. However, that has only been very recently, they were not cohabiting prior to the appellant's imprisonment, nor immediately upon his release because the family lived in an area in which the applicant was excluded from by virtue of his licence conditions. The appellant's partner has been living in the United Kingdom 2007.

In terms of the appellant's integration in the United Kingdom, as above he has lived here since August 2010 (albeit he has been in prison for a not insignificant period of time up until October 2018) and has been in employment for the majority of the time he has been the United Kingdom and at liberty. The appellant's partner is Lithuanian and he has other Lithuanian family members here, including his sister whom he has resided with for the majority of his time here, which, as found by the First-tier Tribunal in accordance with 2016 regulations, does not as such demonstrate integration into the United

Kingdom. However, as also has accepted by the First-tier Tribunal there are other factors, including employment, which does lend support to the finding that the appellant has integrated here.

The appellant has lived the majority of his adult life in the United Kingdom, but retains links to Lithuania, through family (his mother is there and he has Lithuanian family members in the United Kingdom through whom he is likely to retain cultural links, although he has lost contact with his father), he speaks Lithuanian and spent his entire childhood and formative years living there. In these circumstances, although the links are not as strong as his current ones to the United Kingdom, there is still evidence of social, cultural, family and linguistic ties to Lithuania.

The parties are agreed on the applicability of the guidance in MC (Essa principles recast) Portugal [2015] UKUT 520 (IAC) as to the relevance of rehabilitation to decisions taken on public policy and public security grounds under the 2016 Regulations. So far as relevant, the Upper Tribunal confirmed that rehabilitation is not an issue to be addressed in every EEA deportation or removal decision and will not be relevant, for example, if rehabilitation has already been completed. The reference to prospects of rehabilitation concerns reasonable prospects of a person ceasing to commit crime, not the mere possibility of rehabilitation or capability of rehabilitation. To gauge the prospects of rehabilitation, an assessment of the relative prospects of rehabilitation the host Member State as compared with those in the Member State of origin must be gauged, but, in the absence of evidence, it is not to be assumed that prospects are materially different in that other Member State. Matters that are relevant when examining the prospects of rehabilitation of offenders include family ties and responsibilities, accommodation, education, training, employment, active membership of a community and the like.

The evidence as to rehabilitation is somewhat mixed in this case, as is the position of the parties. Up until the post hearing evidence from the National Probation Service, the evidence of rehabilitation by the appellant was very limited and extended only to a certificate showing completion of alcohol in-cell work, which was entirely unexplained and there was nothing to suggest any ongoing or planned further work to address the offending behaviour. The respondent's submission was therefore that there was in reality no significant rehabilitation in progress. The letter from the National Probation Service however refers to a wider range of work to address offending behaviour and I have no reason to doubt that is the position, although it is surprising that none of these wider matters were relied upon by the appellant before the First-tier Tribunal or at the oral hearing before me, although the letter does not indicate when such work was undertaken and it may have post-dated at least the First-tier Tribunal decision.

At the oral hearing, it was submitted on behalf of the appellant that the process of rehabilitation had begun, but not yet been completed with reference to further rehabilitation largely being reintegration into society with no further offences being committed. There has been no amendment to this submission in light of the evidence from the National Probation Service and no suggestion

that rehabilitation has been completed. I find it remains a relevant factor to be taken into account in the proportionality exercise.

In the United Kingdom, the appellant has family ties and responsibilities, including parental responsibilities to his children, including stepchildren. He is now cohabiting with his family and has resumed employment. Whilst in prison he has undertaken further education and training, improving his skills and experience for employment as well. There is lack of any specific evidence of active membership of his local community. On the whole, these are positive factors for the prospects of rehabilitation of the appellant, although it is noted that these were all factors which existed prior to the offence and it has not been identified that the lack of such factors (or any other possible risk factors) contributed to the offence. For example, this was not a theft offence to which lack of employment or resources may be a factor, nor is any change of circumstances identified relevant to the nature of the offence. These positive factors for the prospects of rehabilitation have not been shown to be of any specific relevance to the specific nature of the offence committed.

On behalf of the appellant, it was submitted that the relative prospects of rehabilitation were weaker in Lithuania than in the United Kingdom, due to the absence of the positive factors identified immediately above. There is however no specific evidence in relation to the same submitted by the appellant, there are remaining ties to Lithuania and nothing to suggest that he would not be able to establish himself there with accommodation and employment, with the support of family both there and in the United Kingdom. Although on balance I find that the prospects of rehabilitation are better in the United Kingdom than in Lithuania, the difference is not highly significant, and there remain reasonable prospects of rehabilitation in Lithuania as well.

Finally, as to the balancing exercise required for the proportionality assessment, I take into account the following factors which are adverse to the appellant and in favour of deportation. These include the matters set out in detail above by the First-tier Tribunal, including, first, that the appellant poses an unacceptably high risk to the public. Secondly, that he presents a genuine and sufficiently serious threat to public policy or public security. Thirdly, the seriousness and circumstances of the offence for which he was convicted, at a time when he had already accumulated 9 points on his licence for speeding, shows an escalation of driving offences and more importantly where the result was that an innocent person lost their life, which has a significant and continuing impact on the victim’s family. The seriousness of the offence is reflected in the length of sentence imposed and although there were no aggravating features reflected in the sentence itself (and in fact a reduction for the guilty plea), there are features, including that the appellant attempted to frustrate giving a breath sample at the time of the offence, which are also adverse. Fourthly, the length of sentence has also damaged the appellant’s integration into the United Kingdom. These are all factors which carry significant weight.

There are a number of relatively neutral factors which do not weigh heavily on either side of the balancing exercise, including the appellant’s age, that he is in

a good state of health and he is in a relatively stable economic situation with a good employment history, current employment, education and vocational qualifications. These matters are essentially the same whether the appellant is in the United Kingdom or in Lithuania where he has not show any differential employment prospects.

The following factors are positive ones in favour of the appellant in the balancing exercise against deportation. First, his family life with partner and children, with whom he lives (albeit from only very recently). Three of the four children are British citizens and as the First-tier Tribunal found in paragraph 34, it is in their best interests to remain in the United Kingdom (to benefit from the advantages of their citizenship here) with the appellant (particularly given the young age of some of the children). This is the weightiest factor in favour of the appellant. Secondly, the appellant has a degree of integration in the United Kingdom through employment and his length of residence here since 2010, and family life established here, albeit the strength of that integration is reduced by his imprisonment and because his immediate relationships are with Lithuanian nationals or those with Lithuanian heritage (three of the children being British citizens born to at least one if not both Lithuanian parents). Thirdly, the relatively strong links to the United Kingdom compared to those that remain with Lithuania. Fourthly, the marginally better prospects of rehabilitation in the United Kingdom than in Lithuania, although this is not a weighty factor for the reasons already set out above.

Taking all of these factors into account, I find that the appellant's deportation to Lithuania would not be disproportionate, with the strength of the factors adverse to him not being outweighed even by the strength of his family life in the United Kingdom, the best interests of his children or all the factors positive to him taken cumulatively. The appellant received a lengthy sentence for a very serious offence which has had devastating consequences for others, he poses an unacceptably high risk of reoffending and presents a genuine and sufficiently serious threat to public policy and public security on serious grounds and his deportation is proportionate. For all these reasons the appeal is dismissed under the 2016 Regulations.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal and remake it as follows:

The appeal is dismissed under the Immigration (European Economic Area) Regulations 2016.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed  Date 22nd January 2019

Upper Tribunal Judge Jackson