



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

Appeal Number: DA/00291/2019

THE IMMIGRATION ACTS

**Heard via Skype for Business
at Manchester Civil Justice Centre
On 24 July 2020**

Decision & Reasons Promulgated

On 6 August 2020

Before

UPPER TRIBUNAL JUDGE LANE

Between

**ZIGMANTAS SVELNYS
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Abdullah, instructed by UK International Lawyers
For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 14 July 1958 and is a male citizen of Lithuania. He appealed against a decision of the Secretary of State dated 8 January 2019 refusing to revoke a deportation order. The appellant had entered the United Kingdom in 2009 exercising Treaty Rights as an EEA national. He appealed against the decision to refuse to revoke the deportation order to the First-tier Tribunal which, in a decision promulgated on 17 February 2020, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Details of the appellant's offending are set out in the First-tier Tribunal decision at [3]. Many of the offences which he has committed whilst in the United Kingdom have involved violence. The appellant lives in United Kingdom with his wife, Ms Sveliene. A number of the appellant's offences arose from incidents of domestic violence. It is the respondent's case that the appellant was involved in 49 incidents involving violence necessitating the attendance at the appellant's home of the ambulance service and police. The appellant denies that he was involved in so many incidents.
3. There are four grounds of appeal. First, the appellant argues that the judge has provided insufficient reasoning for his finding that there are serious grounds of public policy justifying the appellant's deportation to Lithuania. He asserts that at [36-40] judge failed to provide a proper assessment by reference to the evidence of his reasons for reaching his decision. In his oral submissions, Mr Abdullah who appeared for the appellant before the First-tier Tribunal and Upper Tribunal, complained that there had been no assessment by the judge of the contents of appellant's witness statement and his claims, set out in that statement, that he is taking steps to manage his anger and alcohol consumption. The judge had paid inadequate regard to the OASys report which indicated that the appellant remained a serious risk to his wife and the police/ambulance services.
4. I do not consider there to be merit in this ground of appeal. There was plainly a dispute between the parties as to the facts, in particular whether or not there had been as many as 49 visits by the police/ambulance services to the appellant's home following reports of incidents of violence there. The appellant appears to be suggesting that the judge should have accepted his evidence that there had not been as many incidents as the respondent states in the decision letter (based upon records kept by the police/ services) and that the steps which he had taken to address his violent propensities should have been given greater weight. There was no obligation upon the judge to accept the appellant's evidence, which he clearly did not. It was open to the judge to prefer the respondent's evidence and to find that there had been 49 incidents at the appellant's home. It was open to the judge to consider that such a number of incidents amounted to serious criminal behaviour on the part of the appellant which undermined his claim to have reformed his conduct. As Mr Bates admitted, the judge has focused upon the risk presented by the appellant 'going forward'. It was plainly open to the judge, notwithstanding the claim that there had been no incidents for some time and that the appellant was reformed, to find that there existed serious grounds of public policy or public security justifying the appellant's deportation. In essence, the frequency of past incidents and the repetition of violent behaviour on the part of the appellant led the judge to conclude that, although the appellant's wife may continue to cohabit and that the last reported incidents of violence some time ago, the appellant continues to pose at this time a clear threat to his wife and to the police/ambulance services. The appellant's ground of appeal amounts to nothing more than a disagreement with findings available to the judge. It was not necessary

for the judge to refer to and reject each and every item of the appellant's evidence, such as what he says regarding his own conduct in his witness statement. Any reading of the decision reveals that the judge has based his findings and conclusion upon a consideration of all the evidence.

5. The second ground of appeal complained that the judge failed to take into account the factors set out at Regulation 27(5) and (6) of the Immigration (European Economic Area) Regulations 2016:

'(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 on 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 or 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 are specific to the person.

(6) Before taking a relevant decision on the grounds of public policy and 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.'

Mr Abdullah complained that there was no mention of proportionality or of any of the factors set out in the regulation; instead, the judge had simply rejected the appellant's evidence. There was little mention of the health concerns of the appellant himself or of his wife or of how the appellant and his wife act as each other's respective carer. Whilst the judge had referred to the fact that the couple would be a burden on the taxpayer in the United Kingdom [47] Mr Abdullah submitted that the appellant had worked in the past that he was not involuntarily unemployed, a matter which to which the judge had not made reference.

6. The ground of appeal is without merit. There is no reason to consider that the judge has not had regard to the regulation 27 factors and to the principle of proportionality in reaching his conclusion. The factors in regulation 27 are addressed throughout the appellant's evidence and

some of them are referred to directly by the judge in his account of that evidence. Given the particular facts in this case and the judge's acceptance of the account of the appellant's conduct given by the respondent and rejection of that given by the appellant, there is nothing perverse nor irrational in the judge's dismissal of the appeal; it was open to the judge to find that the appellant represented a present threat to public order through his violent conduct to reject the appellant's claim to have reformed. The judge was plainly aware of the appellant's medical condition and that of his wife and of the fact that the appellant had worked in the past. Notwithstanding that knowledge, it was open to him to reach the findings conclusions which he has in this decision. He did not fall into legal error by failing to refer to each and every factor in regulation 27 or to make explicit reference to the principle of proportionality.

7. Ground 3 challenges the decision for its failure to accept the appellant's contention that he was remorseful for his past actions and that he intended never to repeat such behaviour again. There was no obligation upon the judge to accept that evidence. Moreover, the argument that the OASys should have attracted little weight because it was three years old is without merit. The judge was entitled to decide the case on the basis of the evidence before him. No evidence was presented, other than the appellant's own assertions which the judge rejected, to suggest that the OASys assessment was no longer relevant.
8. Finally, the appellant submits that the judge failed have regard to the 'compelling medical evidence' relating to both the appellant and his wife in determining the appeal on Article 8 grounds. This ground is without merit. The judge concluded that the appellant and his wife (also a Lithuanian citizen) could continue to care for each other thereby maintain their family life in Lithuania and that they could receive appropriate medical treatment there. No evidence was adduced to indicate that they could not. The judge's conclusion was plainly available to him on the evidence. There was nothing in the evidence medical or otherwise which indicated that family life by necessity had to take place within the jurisdiction of the United Kingdom.
9. For the reasons which I have given above, this appeal is dismissed

Notice of Decision

This appeal is dismissed

Signed

Date 24 July 2020

Upper Tribunal Judge Lane