**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number: DA/00005/2021**

**THE IMMIGRATION ACTS**

| **Heard at Edinburgh** | **Decision and Reason promulgated** |
|---|---|
| **on 9 February 2022** | **On 16 March 2022** |

**Before**

**UT JUDGE MACLEMAN & DEPUTY UT JUDGE FARRELLY**

**Between**

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

Appellant

**and**

**GRAZVYDAS GUDAVICIUS**

Respondent

For the Appellant: Mr M Diwyncz, Senior Home Office Presenting Officer
For the Respondent: Mr B Criggie, of Latta & Co, Solicitors

**DETERMINATION AND REASONS**

1. The parties are as above, but the rest of this decision refers to them as they were in the FtT.

2. By a decision promulgated on 6 September 2021, FtT Judge Prudham allowed the appellant's appeal against deportation under section 5(1) of the 1971 Act and regulation 23 of the Immigration (EEA) Regulations 2016.

3. The SSHD has permission to appeal on the following grounds:

Ground one: Failing to give adequate reasons for findings on a material matter

1. At [27] the FTTJ finds that the appellant presents a low risk of reoffending, however it is unclear on what evidence this finding is made, beyond an acceptance of the appellant's bare assertion that his offending was a result of immaturity, or the appellant seeks to minimise that offending, for example by claiming that the assault charge was a result of self-defence and stating that the sexual assault did not result in a custodial sentence [9], as though that were determinative that an offence had actually occurred. These factors demonstrate that the appellant has failed to accept responsibility for his offending.

2. Furthermore, the appellant has breached his bail conditions and failed to comply with community payback orders on multiple occasions [9], this demonstrates that he is not rehabilitated. Furthermore, the FTTJ considers the fact that the appellant is living with his father as a protective factor, however, this situation is not materially different to the appellant's circumstances during his offending. The appellant was released from detention on 17/6/2021 this time is not sufficient to demonstrate that the appellant is a reformed character and that he will not revert to his offending behaviour. It is therefore submitted that the FTTJ has erred in finding that the appellant poses a low risk of reoffending and consequently that *[he does?]* not pose a genuine, present and sufficiently serious threat to the fundamental interests of society.

3. 'MC' (Essa principles recast) Portugal [2015] UKUT 00520 – (Para 4, 8 and 9) The issue of rehabilitation is not relevant if already concluded, it is not to be assumed in the absence of evidence that rehabilitation would be less likely in the member state, even if it were known they would not have access to a probation officer there. There is no evidence that the appellant would not have access to a probation officer in Lithuania, nor that his rehabilitation may not take place there.

4. SSHD v Dumliauskas and Others [2015] EWCA Civ 145: It is essential to establish a propensity to reoffend, otherwise there is no risk to the community or security. Similarly in respect of rehabilitation, it is not to be assumed that the Appellant's prospects are materially different in that other Member State in the absence of evidence, Dumliauskas [46], [52]-[53] and [59].

5. Furthermore, the Judge has failed to consider the seriousness of the consequences of re-offending in line with Kamki [2017] EWCA Civ 1715. It is submitted that the consistency of the Appellant's offending, 23 convictions over a period of 7 years and he is required to sign the Sex Offenders Register. These factors are in themselves strongly indicative of a propensity to re-offend and that the potential consequences of re-offending are serious, particularly in light of the fact that the appellant entered the property of an 18 year old women armed and threatened her with a meat cleaver, this was the appellant's most recent offence which demonstrates that his offending is becoming more serious. Moreover, the FTTJ has failed to assess the impact of the appellant's actions on the victim.

6. At [28] the FTTJ finds that the appellant's deportation is not proportionate. It is submitted that there are no factors concerning the appellant's age, state of health, family or other conditions that make his deportation disproportionate. Furthermore, there is little evidence that the appellant is integrated into life in the UK, which requires a person to be law-abiding as set out in Binbuga v SSHD [2019] EWCA Civ 551 … "Social and cultural integration in the UK connotes integration as a law-abiding citizen …"

7. … the FTTJ has erred in law, such that the decision should be set aside.

4. The appellant has filed a rule 24 response, in summary as follows:

1. The UT's jurisdiction is on points of law, not weight or re-argument of a case which has been lost.

2. On low risk and protective factors, the FtT heard evidence from both the appellant and his father, gave clear reasons at 26 – 28, and set out the criteria in the regulations before applying them to the evidence.

3. The grounds challenge not findings of fact "merely the interpretation of those facts".

4. The FtT made specific reference to the principles in case law.

5. The grounds misunderstand the burden of proof, the test in the regulations, and the approach set out in the case law.

6. The grounds amount to no more than a disagreement, and the appeal should be refused.

5. Representatives adopted the above pleadings. Mr Diwyncz had little to add. Mr Criggie emphasised that the Judge heard the evidence of the appellant and his father, which had been tested through cross-examination. It had been for the Judge who had that advantage to assess the risk of re-offending and the level of the threat posed. The SSHD was simply trying for "a second bite at the cherry".

6. We reserved our decision.

7. We do not see in the grounds any more than insistence on the SSHD's side of the case. The grounds stop short of asserting that there could rationally have been only one outcome. The references in the grounds to case law, and to comparable prospects of rehabilitation in Lithuania, are confused, and lead nowhere.

8. Given the pattern of repeated and escalating offending, culminating in a very nasty offence, a contrary outcome, on the face of the written evidence, would not have been surprising; but the assessment was for the Judge, who had the advantage stressed by Mr Criggie. We have not been shown that the Judge left anything relevant out of account.

9. The case may have been on the borderline, and the same conclusion might not have been reached by every Judge. However, the key point is that the Judge accepted that the appellant has genuinely reversed the course of his life. The SSHD has not shown that conclusion to have involved the making of any error on a point of law.

10. The SSHD's appeal is dismissed. The FtT's decision stands.

11. No anonymity direction has been requested or made.

9 February 2022

UT Judge Macleman

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**NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

**5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**

**6. The date when the decision is "sent' is that appearing on the covering letter or covering email.**