



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Number: DA/00032/2020 (V)**

THE IMMIGRATION ACTS

**Heard by *Skype for Business*  
on 6 January 2021**

**Decision & Reasons  
Promulgated  
On 18 January 2021**

Before

**UT JUDGE MACLEMAN**

Between

**KRISTAP RIZOVS**

and

Appellant

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

Respondent

For the Appellant: Mr Rea, of Rea Law, Solicitors

For the Respondent: Mr Whitwell, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This determination is to be read with:
  - (i) The respondent's decision, dated 8 January 2020, to make a deportation order under the Immigration (EEA) Regulations 2016.
  - (ii) The appellant's grounds of appeal to the First-tier Tribunal.
  - (iii) The decision of FtT Judge Conway, promulgated on 4 April 2020.
  - (iv) The appellant's grounds of appeal to the UT, 1 - 9, stated in the application to the FtT for permission to appeal, filed on 17 April 2020.
  - (v) The refusal of permission by the FtT.

- (vi) The appellant's application to the UT for permission to appeal, filed on 12 June 2020; advancing the same grounds but emphasising ground 1.
- (vii) The grant of permission by UTJ Jackson, dated 3 July 2020.
2. A technical issue prevented the hearing on 6 January from being mechanically recorded. However, parties agreed to dispense with any requirement for oral recording, and were satisfied that the technology enabled an effective hearing to take place.
  3. Mr Rea relied on the grounds, which are quite fully stated. He submitted that the FtT essentially erred by placing the onus on the appellant rather than on the SSHD; failed to carry out the proportionality exercise required by regulation 27 (5); and failed to deal with the submission that the appellant, in terms of regulation 27 (5) (c) did not present "a genuine, **present** and sufficiently serious threat affecting one of the fundamental interests of society" (emphasis as placed by Mr Rea).
  4. Mr Howells, dealing with the grounds in order, maintained that no error on a point of law had been shown, and the decision should stand.
  5. Mr Rea in reply said that [43] of the decision is contrary to regulation 27 (5) (b), which provides that a decision " must be based exclusively on the personal conduct of the person concerned"; that error taints the rest of the decision; the decision dealt with the case as if under the immigration rules, not the regulations, and "set the bar too high" for the appellant; and the case should be remitted to another judge of the FtT.
  6. I reserved my decision.
  7. Ground 1 asserts that the judge failed to carry out the proportionality assessment "in accordance with EU law" and left material matters out of account.
  8. The first proposition in this ground does not reflect the decision, which refers to the regulations in detail and decides the case in their terms. There is also reference to article 8 of the ECHR and to part 5A of the 2002 Act, but that is a "belt and braces" exercise, for avoidance of doubt.
  9. The second proposition in ground 1 is vacuous. Neither in grounds nor in submissions did the appellant specify anything which is not dealt with in the decision (other than in ground 4, dealt with below). As Mr Howells demonstrated in his submissions, the judge dealt with all material matters.
  10. Ground 2 is that the judge did not recognise the importance of the appellant's free movement rights, as illustrated by *Straszweski* [2016] 1 WLR 1173. Mr Rea did not refer to anything in that decision. Deportation under the regulations is essentially an exercise in when free movement rights may be restricted. This ground is only another vague disagreement,

dressed up under a legal generalisation with no purchase on the facts of the case.

11. Ground 3 is that at [35] the judge referred to the appellant's failure to produce an expert risk assessment, leaving out of account that the onus to do so was on the SSHD.
12. All the judge said at [35] was that no expert report was before him, which is correct.
13. Mr Rea referred to no authority for an onus on the SSHD to provide a report.
14. The context is that the judge did not give weight to the appellant's claim to have reformed, for which several reasons are given. No error is shown in those reasons.
15. The decision does not bear out the assertion that the judge reversed the burden of proof.
16. In any event, once the evidence is out, cases turn on weighing it, rather than on where the onus lies, other than in exceptional and finely balanced instances. The judge did not find this case to turn on any such fine point.
17. Ground 4 says that the judge failed to note or give weight to the evidence from the appellant's partner that although they no longer cohabited, she was willing to support him.
18. This issue is subsumed into the judge's reasons for giving her evidence little weight. She did not attend; her "statement" was unsigned and undated; the claimed provision of emotional support is quoted at [37]; and she told the appellant to leave. It is misleading to present this relationship as a factor which might realistically have advanced the appellant's case any further than it was found to do.
19. Ground 5 is only a vague disagreement on whether the judge was entitled to find the appellant to be a persistent offender. It does not show any legal error in that conclusion.
20. Grounds 6 and 7 run together. The proposition is that the SSHD, in hypothesising about the consequences of the appellant's offending on victims of his offences, went against regulation 27 (5) (d), which provides that "matters isolated from the particulars of the case ... do not justify the decision"; and that in finding that to be reasonable at [43], the judge erred in law.
21. The consequences of offending are not isolated from the particulars of a case. They form an intrinsic part.
22. The consequences of offending on victims are not baseless hypotheses; they are obvious.

23. As Mr Howells observed, at [43] the judge was not embarking on an unprompted exercise. He was dealing, sensibly, with a submission put to him by Mr Rea.
24. Grounds 8 and 9 also appear to run together. Mr Rea did not add to these in his submissions. I find in them no clear proposition of error in the decision on a point of law.
25. The grounds and submissions for the appellant have not shown that the FtT went wrong on the burden of proof, or that it failed to conduct the proportionality exercise required by the regulations, or that its conclusions should be set aside for having involved the making of any other error on a point of law.
26. The decision of the First-tier Tribunal shall stand.
27. No anonymity direction has been requested or made.

Hugh Macleman

7 January 2021  
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.**