Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00243/2018 ('V')

THE IMMIGRATION ACTS

Heard at Field House And via Teams On 12th April 2022	**Decision & Reasons Promulgated On 26th April 2022**

Before

UPPER TRIBUNAL JUDGE KEITH

Between

MR ARTURS SPRINCIS
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: The appellant did not attend and was not represented
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the remaking of the decision in the appellant's appeal against the respondent's decision to deport him under regulation 36 of the Immigration (EEA) Regulations 2016 (the 'Regulations'). Also, for completeness, I have considered any question of an appeal by reference to the appellant's rights under Article 8. I gave an oral decision at the hearing, which these reasons reflect.

2. I chaired the hearing in person, while Mr Clarke attended remotely via Teams. The appellant did not attend and was not represented. Nevertheless, I was satisfied that he had been sent a notice of hearing to the last known email address provided by him and that every effort had been made to give him the opportunity to participate in this hearing, so he

had not been deprived of a fair hearing. It was not appropriate to adjourn the hearing.

The background

3. Mr Clarke referred me to the preserved findings of the First-tier Tribunal ('FtT'), which confirmed that the appellant had the basic level of protection for the purposes of the Regulations, (§17 of the FtT's decision), and referred to his criminal offending at §8. It is worth reciting those offences, as recorded in the Police National Computer ('PNC') record. They begin in Latvia, his country of origin and then recommence when he entered the UK:

    4. on 10th November 2014, the appellant was convicted of theft in Latvia and sentenced to seven months' imprisonment;

    5. on 24th November 2014, he was convicted of theft in Latvia and sentenced to five months' imprisonment;

    6. on 4th December 2014, he was convicted of driving a vehicle whilst unfit through drink or drugs in Latvia, sentenced to four months;

    7. on 3rd March 2015, he was convicted in Latvia of theft, and was sentenced to five months' imprisonment subsequently varied to a year and disqualified from driving for four years; and

    8. on 16th February 2016, he was convicted in Latvia of theft and sentenced to 50 days' imprisonment and disqualified from driving for three years and eight months.

9. In terms of the rest of the appellant's immigration history, the precise date on which the appellant entered the UK is unclear, albeit it is accepted by virtue of his employment records that he was employed in the UK for at least short periods from August 2017. Swiftly thereafter, the appellant received a conditional caution for three shoplifting offences on 8th September 2017. He was subsequently convicted in the UK on 15th January 2018, of going equipped for theft other than from a motor vehicle and shoplifting at the Staffordshire Magistrates' Court and fined £350.

10. As recorded in my error of law decision, in light of those convictions, on 22nd February 2018, the respondent served him with a notice informing him of her intention to make a deportation order and the decision itself was taken on 20th March 2018, as a result of which the decision was taken to remove the appellant. He has since been removed.

The respondent's decision

11. In the respondent's decision, she noted the appellant's limited period of time in the UK, which Mr Clarke emphasised before me. Whilst he claimed to have arrived in the UK on 13th April 2016, he had provided no relevant evidence of that and it was only when on 5th September 2017 that he came to the adverse attention of authorities that the question of his having worked earlier in August 2017, specifically 11th August 2017, that

any exercise of treaty rights occurred. In that context he had submitted and I have seen a P45 indicating a last period of employment on 24th September 2017. He was therefore entitled to the basic level of protection.

12. The respondent referred to the principles set out in regulation 27(5), which I do not recite for the sake of brevity, as well as schedule 1 of the Regulations. The respondent considered specifically the four counts of theft in Latvia and going equipped for theft in the UK. The appellant had committed four offences of theft and shoplifting. There was, the respondent concluded, a pattern of behaviour and in that context, at least a prima facie case that that the appellant presented a present risk of further offending.

13. Coupled with this was a pattern of recklessness and risk-taking behaviour, in particular choosing to drive whilst under the influence of excess alcohol while in Latvia. The fact that the appellant had gone on to commit further offences in the UK showed that his sentences in Latvia had failed to serve as a deterrent. In the circumstances, at §24 of her decision the respondent concluded that the appellant had a propensity to reoffend and that his offending represented a genuine, present and sufficiently serious threat to the public to justify his deportation on grounds of public policy.

14. At §25 onwards, the respondent considered regulation 27(5) and the fact that any decision must comply with the principle of proportionality. In this context, the appellant was, as at the date of the decision, 30 years old and believed to be in good health. He was a Latvian national and had spent the vast majority of his life in Latvia. There was no evidence that he had been resident in the UK for a continuous period of five years. Despite the claim to the contrary, it was asserted that he would have developed social relationships with others in Latvia and whilst he asserted that he would be isolated in Latvia if he were returned, he had not demonstrated that he would lack the possibility of re-integrating into Latvian society.

15. The respondent went on to consider the question of the appellant's rehabilitation, citing the well-known authority of R(Essa) v Upper Tribunal (IAC) [2012] EWCA Civ 1718. There was no evidence of any rehabilitation. He had claimed his sister resided in the UK, but she had not prevented him from committing the offences. There was no witness statement from her. In summary, the respondent concluded that not only did the appellant represent the requisite threat, but that deportation was proportionate.

16. The respondent separately considered Article 8. It was not suggested that his deportation was conducive but nevertheless there was a freestanding analysis. Put simply, in relation to private life it was not accepted that he had been lawfully resident for most of his life; not accepted that he was socially and culturally integrated in the UK; and not accepted that there would be very significant obstacles to his integration in Latvia. There were similarly not very compelling circumstances. There was also no evidence of family life and in these circumstances, any human rights appeal was rejected.

17. His appeal was certified under regulation 33 of the Regulations, namely that he would not face a real risk of serious irreversible harm if he were removed to Latvia, and it was open to him to re-apply for entry clearance for the purposes of contesting this appeal. He has not done so.

The respondent's submissions

18. In his succinct but relevant submissions to me, Mr Clarke referred to the well-known authority of Arranz (EEA regulations – deportation – test) [2017] UKUT 0294 (IAC). The burden of proof was on the respondent. However, as Arranz confirmed at §43, this burden was reasoned on the basis of the authority of Rosa v SSHD [2016] EWCA Civ 14. §29 of Rosa in turn indicated that whilst there was a legal burden upon the respondent, there could be a shift in evidential burden. Put simply, where the respondent had set out, as here, a strong prima facie case as to relevant threat posed by the appellant as well as the proportionality of his removal, in the absence of any evidence adduced by the appellant other than a bare assertion that he had turned over a proverbial "new leaf", he had not rebutted the prima facie case and in the circumstances, his appeal should fail.

19. Practically, I was asked to consider the circumstances that would justify a suggestion that he had turned over a "new leaf". There was a clear pattern of offending. There was no evidence of rehabilitation courses; no character reference; and crucially no evidence of why he had committed the crimes he had and had now moved on with his life. Also in that context, and in particular in relation to the proportionality, there was very limited evidence of his private life and none in relation to any family life in the UK. At best, he had been present in the UK for between a year and two years. He had since left as a result of the deportation but, crucially, had not applied to return to the UK to fight this appeal.

20. By reference to Article 8, even if it was said that there were some form of private or family life that had been developed four years ago, there was slim evidence of it or that his removal would be disproportionate and therefore the Article 8 claim should similarly fail.

Discussion and conclusions

21. I accept the proposition advanced by Mr Clarke that whilst Arranz makes clear that the burden of proof is upon the respondent, it is open to the respondent to adduce a prima facie case indicating the relevant threat and in relation to proportionality and then in those circumstances for an evidential burden to pass to the appellant. This is important in the context where, as here, the respondent has adduced all the evidence before her and the appellant has adduced virtually no evidence whatsoever.

22. In this context, the prima facie evidence is clear. The appellant has a pattern of offending between 2014 and 2016 of a similar nature in relation to theft, albeit also in the context of other risk-taking behaviour such as driving through drink and drugs. A particular concern that I had identified in the error of law hearing was whether there could be said to be some

declining seriousness in offending, bearing in mind that the offences in Latvia, the country of origin, had taken place some five years ago, and also that the more recent offending in Latvia was of only 50 days' imprisonment. This also compared to the fine and caution for the appellant's UK offences.

23. However, as I had identified in my error of law decision, it is not possible to compare the levels of sentencing between Latvia and the UK. It is at least possible to conclude on a prima facie case that there is a pattern of offending specifically in relation to shoplifting and/or preparations for theft which was continued almost immediately upon the appellant's entry to the UK. Whilst the appellant asserts that he arrived in the UK on 13th April 2016, even taking this case at its highest, he was encountered for shoplifting offences in 2017, so barely a year afterwards.

24. In these circumstances, I am satisfied that the respondent has established a pattern of offending behaviour and, turning to the reasoning of the respondent, that the question is whether such persistent offending, which I am conscious is not of a violent nature nor does it relate to drugs, is nevertheless one that could potentially engage the deportation provisions. Clearly, combating the effects of persistent offending which, if taken in isolation, may be unlikely to meet the requirements of regulation 27, may nonetheless potentially affect the fundamental interests of society as confirmed and as relied upon by Mr Clarke at §7(h) of schedule 1 of the Regulations.

25. I must be satisfied that the threat is sufficiently serious and in doing so that imports a consideration of the level of protection that the appellant has. He has in this context only the basic level of protection and of relevance to the seriousness of the threat is the pattern of offending which began almost immediately at the start of the brief period in which the appellant was in the UK. I am satisfied in this context that the respondent has established a prima facie case which the appellant has not rebutted that he does indeed represent a relevant threat for the purposes of the Regulations.

26. I turn then to the question of proportionality and factors which might otherwise have a bearing on the appeal, for the purposes of the Regulation. It is not the question of previous criminal convictions justifying the decision as confirmed under regulation 27(5)(e) and I am conscious that I have to take into account considerations such as the appellant's age, state of health, family and economic situation and length of residence.

27. As identified in the refusal decision, the appellant is not a child. He is now in his 30s. There is no indication of any impairment of health. Whilst he has made bare assertions as to his family in the UK and somehow being isolated in Latvia, I am not satisfied that there is any evidence that his family and any other economic situation would mean it is inappropriate to uphold the deportation order. The brevity of his length of residence in the UK is also noteworthy and I am far from satisfied that he has established any social or cultural integration in the UK. It is, in contrast, highly likely

that given that he did not leave Latvia until at least the age of 30 that he is likely to have extensive links in his country of origin.

28. In the circumstances, I am satisfied that the decision taken to deport him was proportionate. It has been open to him not only to adduce evidence if he wished to do so from Latvia but also to have applied for entry clearance to participate further in his appeal. He has effectively done nothing to engage with his appeal, which also in turn is reflective of his lack of likely links to the UK.

29. I come on to consider finally the question of Article 8. I must consider that at the date of this hearing and not just at the date of the impugned decision. I am not satisfied that he had or has established any meaningful private or family life that engaged Article 8. In doing so I accept that the appellant worked for a brief period in the UK as indicated, namely for a matter of months. He was then deported and has not applied for entry clearance since. There is no detail other than the fact of having briefly worked and other than his bare assertions as to having a sister and other relatives in the UK. In the absence of any evidence, I am not satisfied that there is any private or family life so as to engage Article 8 nor indeed any evidence that there are any links which he seeks to foster in the future.

30. Even if I had concluded differently as to the existence of family and private life I would have not hesitated in concluding that deportation in these circumstances was proportionate. There is a concern which I regard in the context of the Regulations as to the appellant's persistent offending. There was, in this context, a clear public interest in the appellant's deportation and that in the absence of any meaningful private and family life, the decision to deport him is proportionate also for the purposes of Article 8 ECHR.

31. In the circumstances therefore, the appellant's appeal against his deportation is refused under the Regulations. Any appeal to the extent that it exists is also similarly dismissed by reference to Article 8 ECHR. The appellant's appeals therefore fail and are dismissed in their entirety.

Decision

32. The appellant's appeal under the Immigration (EEA) Regulations 2016 is dismissed.

33. The appellant's appeal on human rights grounds is dismissed.

Signed: J Keith

Upper Tribunal Judge Keith

Dated: **19th April 2022**

TO THE RESPONDENT
FEE AWARD

The appeal has failed and so there can be no fee award.

Signed: J Keith

Upper Tribunal Judge Keith

Dated: **19th April 2022**

ANNEX: ERROR OF LAW DECISION

IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00243/2018

THE IMMIGRATION ACTS

Heard at Field House **And via Skype** **On 23rd April 2021**	**Decision & Reasons Promulgated** **On**

Before

UPPER TRIBUNAL JUDGE KEITH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ARTURS SPRINCIS
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the appellant:	Ms A Everett, Senior Home Office Presenting Officer
For the respondent:	The respondent did not attend and was not represented.

DECISION AND REASONS

Introduction

1. These are the approved record of the decision and reasons which I gave orally at the end of the hearing on 23rd April 2021.

2. Ms Everett and I attended the hearing via Skype, while the hearing was also open to attend at Field House. The respondent (hereafter, 'Claimant') did not attend, but I was satisfied that he had been sent the Notice of Hearing to the last-known email address provided by him and every effort had been made to give him the opportunity to participate in this hearing, so that he had not been deprived of a fair hearing. It was not appropriate to adjourn the hearing.

3. The Secretary of State appeals against the decision of First-tier Tribunal Judge Moon (the 'FtT') who, on considering the Claimant's appeal on the papers, in a decision promulgated on 21st July 2021, allowed the Claimant's appeal against his expulsion under regulation 36 of the Immigration (EEA) Regulations 2016 (the 'Regulations').

4. In essence, the Claimant's appeal was whether, for the purposes of regulation 23(6), his expulsion was justified on grounds of public security, with reference to the principles set out in regulation 27(5) and schedule 1 of the Regulations. The Claimant, a Latvian national, had a number of convictions between November 2014 and February 2016, for theft and driving offences, with prison sentences imposed ranging from 50 days to 1 year in prison in Latvia, and additional sanctions. Following his entry to the UK, he received a caution for three shoplifting offences on 8th September 2017 and was further convicted on 15th January 2018 of theft and shoplifting and fined £350. Following his UK conviction, he was served with a notice of liability for deportation on 22nd February 2018 and the Secretary of State made a decision to remove the Claimant on 20th March 2018.

The FtT's decision

5. The FtT noted, as per the authority of Arranz (EEA regulations – deportation – test) [2017] UKUT 0294 (IAC), that the burden of proof lay on the Secretary of State to prove that the Claimant represented the relevant threat. Having concluded at §17 that the Claimant did not have any protection greater than a 'basic' level of protection, the FtT noted the pattern of convictions at §§21 to 24. The Claimant's one-year prison sentence was more than five years ago and the last sentence in Latvia was for 50 days, suggesting a lessening seriousness of offending. Whilst the Claimant had reoffended in the UK, he had only received a fine which indicated that the claimant's behaviour was not getting worse. Whilst the FtT had no objective report on the Claimant's risk of reoffending such as an OASys report, and whilst she accepted that the Claimant had a propensity to reoffend, the nature and seriousness of his offending diminished over time. The FtT concluded that the threshold test of

whether the Claimant represented a threat affecting the fundamental interests of society, which was sufficiently serious, was not met (§27).

6. The FtT separately went on to consider whether, if she were wrong about whether the Claimant represented a sufficient threat, his expulsion was proportionate. The FtT concluded at §§35 and 36 that his expulsion was not proportionate, notwithstanding the relatively limited period of time spent in the UK, and the limited information about his private life in the UK. His serious offending had been number of years ago and the evidence was that his offending in the UK was decreasing in its seriousness.

The grounds of appeal and grant of permission

7. The Secretary of State appealed on the basis that the FtT's findings that the Claimant did not represent a sufficiently serious threat were inadequately reasoned, when the FtT had acknowledged that the Claimant had a propensity to reoffend; that his offending did threaten one of the fundamental interests of society; and that the Claimant had done nothing apparently to address his behaviour. The fact that the offending had not got any worse and the Claimant had not offended since his last conviction in January 2018 (which was only recent, in any event) was not capable of weakening the Secretary of State's case that the Claimant represented a relevant threat. The FtT's conclusions on proportionality were similarly flawed.

8. First-tier Tribunal Judge Andrew granted permission on 30th July 2020. The grant of permission was not limited in its scope.

The hearing before me

9. I had already indicated that it was appropriate that we proceed with the hearing today, notwithstanding the Claimant's non-attendance, because he had had been properly served with the Notice of Hearing and had had the opportunity to attend the hearing.

10. I also broached with Ms Everett at the beginning of the hearing, the issue of whether the Claimant had potentially raised a protection appeal. I did so as in his appeal to the FtT, the Claimant had referred potentially to a purported refugee claim being based on being a self-described 'gypsy,' who would 'struggle' on his return. In the circumstances, I was conscious of the recent report authority of JA (human rights claim: serious harm) Nigeria [2021] UKUT 0097 and the proposition that where a human rights claim was made, in circumstances where the Secretary of State considered the nature of what was being alleged could constitute a protection claim, it was appropriate for her to draw this to the attention of the person concerned.

11. In response, Ms Everett made the point that first, the reference to a potential refugee claim was very late in the day, being referred to only in

the appeal to the FtT and not in any decision by the Secretary of State, and second, these facts were very different from the situations which might arise where a human rights claim was made and everyone was aware that in fact what was being alleged was a protection claim and it had not been raised. However, here, there was simply no evidence adduced and the briefest reference to the Claimant potentially 'struggling' on his return to his country of origin, Latvia, as opposed to having a fear of persecution. Whilst Ms Everett accepted the historic persecution of traveller and/or gypsy communities in certain countries, nevertheless she did not regard this as a claim that, even in the barest of details and notwithstanding the Claimant's lack of legal representation, could potentially constitute a protection claim. I agreed with Ms Everett's submission and did not regard this as a 'Robinson' obvious error (see R (Robinson) v SSHD [1997] 3 WLR 1162) in the circumstances where it was necessary for me to set aside the FtT's decision on that basis.

12. Coming on next to the Secretary of State's appeal, Ms Everett's submission was that the FtT's reasoning was simply inadequate. It was not enough to say that because the Claimant's offending might have either not got worse, or alternatively, lessened over time, that the Claimant did not represent a sufficiently serious threat, where the FtT found that he had done nothing to address his offending. It was almost implicit in the FtT's reasoning, although not expressly stated, that the FtT had somehow formed a value judgment on the seriousness of offending, but that was not explicitly stated.

Discussion and conclusions

13. I agree with Ms Everett's submission in relation to the inadequacy of the FtT's reasoning. Whilst it might have been that had the FtT's reasoning been more fully explained, a judge may have taken the view that the Claimant did not represent such a sufficiently serious threat, here the reasoning was both limited and also potentially contradictory. In §24 the FtT had stated as follows:

> "It follows that the more recent offences are less serious examples of offending behaviour. This indicates that the appellant's behaviour is not getting worse."

14. However, at §26 the FtT went on:

> "I have no sentencing remarks or professional, objective reports on the risk of reoffending, such as an OASys report but considering all of the evidence available, I do find that the appellant has a propensity to reoffend, however I also find that the nature and seriousness of the offending behaviour diminished over time."

15. In other words, at §24 there was a reference to the behaving not getting worse whereas at §26 the suggestion is that the seriousness has in fact diminished, and that is in the absence of any available evidence in relation to an OASys report. Instead, the FtT solely focussed on the

sanctions imposed which, as Ms Everett rightly pointed out, compared sentences for offences given in the UK in contrast to Latvia where there is no information on the sentencing policy in that country. Not only is there a contradiction, but a lack of analysis as to potential differences in sentencing policy in the two countries, and finally, a flaw in equating a reduction in the seriousness of offending, with the Claimant not posing a relevant threat, where, as here, the Claimant has nevertheless continued to offend, with recent offending in the UK.

16. It might be said that the flaws in FtT's reasoning were immaterial, as the FtT had concluded that notwithstanding the 'threshold' test not being met, she had gone on to find that the expulsion decision was disproportionate. However, it was the same flawed analysis by which, at §35, the FtT concluded that the Claimant's expulsion was disproportionate. The FtT had noted that the factors weighing against removal were relatively few in number. The Claimant had only resided in the UK for a short period and there would be no factors making it difficult for the Claimant to integrate into Latvia, (see §34), so the sole factor tipping the balance was the decreasing seriousness of offending which, as I have already outlined, was inadequately analysed and explained.

17. In the circumstances, not only was the FtT's reasoning in relation to the threshold test flawed but the analysis in relation to proportionality was similarly flawed and for those reasons I conclude that the FtT's reasoning was unsafe and cannot stand. I therefore set aside the FtT's decision in its entirety, with the only preserved findings that the Claimant had the 'basic' level of protection under the EEA Regulations (§17) and his offending was as set out at §11 of the decision.

Decision on error of law

18. In my view there are material errors here and I must set the FtT's decision aside.

Disposal

19. With reference to paragraph 7.2 of the Senior President's Practice given the limited scope of the issues, it is appropriate that the Upper Tribunal remakes the FtT's decision which has been set aside.

Directions

20. The following directions shall apply to the future conduct of this appeal:

20.1 The Resumed Hearing will be listed before an Upper Tribunal Judge sitting at Field House, via Skype or Teams, on the first open date, time estimate **half a day**, to enable the Upper Tribunal to substitute a decision to either allow or dismiss the appeal.

20.2 The Claimant shall no later than 4 PM, 14 days before the Resumed Hearing, file with the Upper Tribunal and served upon the Secretary of State's representative a consolidated, indexed, and paginated bundle containing all the documentary evidence upon which he intends to rely. Witness statements in the bundle must be signed, dated, and contain a declaration of truth and shall stand as the evidence in chief of the maker who shall be made available for the purposes of cross-examination and re-examination only.

20.3 The Secretary of State shall have leave, if so advised, to file any further documentation she intends to rely upon and in response to the appellant's evidence; provided the same is filed no later than 4 PM, 7 days before the Resumed Hearing.

Notice of Decision

The decision of the First-tier Tribunal contains material errors of law and I set it aside, subject to the preserved findings about the Claimant having the 'basic' level of protection under the EEA Regulations (§17) and the Claimant's criminal offending at §11 of the FtT's decision. The Upper Tribunal will retain remaking of the appeal.

No anonymity direction is made.

Signed J Keith Date: 5th May 2021

Upper Tribunal Judge Keith