



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004923
First-tier Tribunal No:
DA/00259/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 05 September 2023

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

Vytautas Glinskas
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr J Greer of Counsel, instructed by S Satha & Co Solicitors
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard by remote video at Field House on 21 August 2023

DECISION AND REASONS

1. For convenience the parties are referred to as they were in the appeal before the First-tier Tribunal.
2. The respondent has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Malik) promulgated 20.7.22, allowing the appellant's appeal against the respondent's decision of 14.10.21 to remove the appellant from the UK to Lithuania, pursuant to the public policy grounds under Regulation 23(6)(b) of the Immigration (EEA) Regulations 2016.
3. The trigger for removal was the appellant's convictions for criminal offences of criminal damage and fraud (money laundering to the total value of £532,000 as part of a sophisticated roofing scam on vulnerable, elderly victims), for which he was sentenced to a term of imprisonment of four years and six months.
4. The appeal was allowed in the First-tier Tribunal on the basis that the respondent had failed to demonstrate that the appellant posed a genuine,

present, and sufficiently serious threat affecting one of the fundamental interests of society.

5. Following the helpful submissions of both representatives, I reserved my decision to be given in writing, which I now do.
6. In summary, the grounds argue that the First-tier Tribunal (i) made a material misdirection in law in failing to consider the appellant's previous conviction for using a false name and theft from 2007 when finding that the crimes triggering the removal decision were not similar in pattern, when, taking into account past conduct, there was a continuing pattern of escalating criminal behaviour which justified deportation under Regulation 27(5)(c); and (ii) failed to provide adequate reasons for finding the appellant to be a reformed character with a reduced risk of re-offending and low risk of serious harm. It is argued that the First-tier Tribunal failed to make an overall assessment of the evidence and to balance the public policy elements of the EEA Regulations. It is submitted that the appellant continues to present a genuine, present and sufficiently serious threat to the public.
7. In granting permission, Upper Tribunal Judge Kamara, considered it arguable that the First-tier Tribunal failed to undertake an overall assessment of the evidence, including the escalation of the appellant's offending, his previous convictions of dishonesty and failure to adhere to probation requirements.
8. In relation to the first ground, Ms Cunha submitted that the First-tier Tribunal failed to take into account the escalation of offending and that this in turn demonstrates that he is still a risk to the public. Ms Cunha admitted that the second ground was not the strongest and did no more than rely on the written grounds in the application for permission.
9. I am satisfied that the First-tier Tribunal Judge set out the relevant provisions of the Regulations, including Schedule 1. At [21] of the decision, the judge accepted that the length of sentence suggested that Regulation 27(5)(c) was met but noted that the OASYS report suggested a low risk of reoffending and no risk to others. The appellant remains subject to probation supervision and his licence will not end until April 2024.
10. It is clear from [16] and [17] that the judge took into account that the index offences were serious and caused harm to vulnerable victims. The considerations between [21] and [26] appears to comprise factors in the appellant's favour from the OASYS report and information from the appellant's probation officer. At [27] of the decision, where the judge points out that a deportation decision cannot be taken to serve economic ends and stated: "*Whilst the appellant's offending behaviour has escalated over time, it is not of a similar pattern - and his previous criminal convictions do not in themselves justify deportation.*" The remaining paragraph, [28], is the conclusion that as the evidence indicates that the risk of re-offending and risk of serious harm is low, so that "*the respondent, on balance, has not discharged the burden to justify deportation on the grounds of serious grounds of public policy or public security. Given this, the appellant does not need to show compelling circumstances and I find the decision to remove him is not in accordance with the regulations.*"
11. The previous convictions reveal that the appellant has committed theft and has used a false name in the past. As the judge accepted, the latest offences viewed in the light of the antecedent record shows significant escalation in offending. Although Ms Cunha submitted this had not been properly taken into account, the escalation and seriousness is referenced twice in the decision, at [17] and again at [27]. It is also clear that the judge was fully aware of the offending history,

which is specifically referenced at [17]. Having also considered that history with the two representatives at the appeal hearing before me, I am not satisfied that it can be said that there was a particular pattern of offending other than generally in that there are repeat offences of dishonesty. There appears to have been three sets of shoplifting offences in 2007, in one of which the appellant gave a false name. He next comes to attention whilst trying to enter the UK in a minibus in 2013 but was refused entry as he had not paid the fines imposed previously. His next offending are the serious offences for which he received the index sentence of imprisonment in 2019 which triggered removal proceedings.

12. The respondent also suggests that there is a current threat by reason of a risk of opportunistic offending. Reliance is made on Vasconcelos (risk - rehabilitation) Portugal [2013] UKUT 378 (IAC), in which the Upper Tribunal held that *"In assessing whether an EEA national represents a current threat to public policy by reason of a risk of resumption of opportunistic offending, the Tribunal should consider any statistical assessment of re-offending provided by NOMS but is not bound by such data if the overall assessment of the evidence supports the conclusion of continued risk."* Unarguably, the judge did take the professional evidence of the OASYS report and assessment into account. I am not satisfied it can be said that the First-tier Tribunal failed to take into account the risk of future opportunistic offending into account. The judge was entitled to rely on the probation officer's evidence of several factors which informed the opinion of a low risk of harm and of re-offending. The serious offending leading to the sentence of imprisonment was motivated by financial considerations and there are now factors suggesting that is no longer a real motivation, given factors referred to, including the training he proposed to become an HGV driver. Frankly, it is not clear to me from the grounds or the submissions what more the judge could have said or taken into account, or put another way, what specifically was left out of account.
13. Having carefully considered the grounds as drafted and advanced by Ms Cunha against the impugned decision, I cannot agree that the decision discloses a lack of adequate reasoning or any material misdirection in law and find that it is a reasoned and balanced decision. A different judge may well have reached a different conclusion, but I am satisfied that the findings were open to the Tribunal on the evidence and are supported by adequate reasoning. The findings and conclusion were within the range open and cannot be said to be irrational or perverse.
14. In the circumstances, I find no material error of law in the making of the decision of the First-tier Tribunal.

Notice of Decision

The respondent's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appeal remains allowed.

I make no order for costs.

DMW Pickup

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Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 August 2023