IAC-PE-AW-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01811/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8th July 2015	**On 16th July 2015**

Before

UPPER TRIBUNAL JUDGE RENTON
UPPER TRIBUNAL JUDGE SMITH

Between

NERIJUS JARUSEVICIUS
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D Chirico, Counsel, instructed by Wilson Solicitors LLP
For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a male citizen of Lithuania born on 30th June 1977. Following his conviction on 1st July 2010 at Chelmsford Crown Court for conspiracy to handle stolen goods, the Appellant was sentenced to 42 months' imprisonment, and on 9th September 2014 the Respondent decided to make a deportation order against him. The Appellant appealed that decision under Regulation 26 of the Immigration (European Economic

Area) Regulations 2006, and that appeal was heard by First-tier Tribunal Judge Cameron (the Judge) sitting at Taylor House on 9th April 2015. The Judge decided to allow the appeal for the reasons given in his Decision dated 21st April 2015. The Respondent sought leave to appeal that Decision, and on 26th May 2015 such permission was granted.

Error of Law

2. We must first decide if the Decision of the Judge contained an error on a point of law so that it should be set aside.

3. The Judge allowed the appeal because he was not satisfied that the Respondent had shown that the Appellant's removal was justified on grounds of public policy and/or public security. This test was the appropriate test taking as a starting point a previous finding by the Tribunal that the Appellant had not acquired a right of permanent residence.

4. The Judge found that the Appellant's removal was not justified because although he was satisfied that the Appellant's offending was serious, he found that the Appellant was at a low risk of further offending and a low risk of harm to the public. This finding was made mainly on the basis that the Appellant had been granted bail on 1st September 2011 since when there had been no further offending. Indeed, there was no evidence that there had been any breach of the terms of the Appellant's bail nor of his probation or licence. Therefore the Judge found that if the Appellant were allowed to remain in the UK he would not pose a genuine, present and sufficiently serious threat to the interests of public policy and public security.

5. The Judge also took account of the fact that since his release from detention the Appellant had lived with his two children and his mother. His children are his daughters Ieva born on 19th June 2005 and Justina born on 5th September 2007. They were both born in the UK. There was no evidence that their mother had played any part in their lives since the Appellant's release from detention, and the Judge was satisfied that since then the Appellant had cared for his children with the assistance of his mother. The Judge found that the children had a strong bond with their father, and that it would be unduly harsh to expect them to relocate to Lithuania with him. The Judge was satisfied that if the children remained in the UK the Appellant's removal would adversely affect them. The children's grandmother would not be able to take over his role in their lives partly because of her limited ability to speak English.

6. At the hearing, Mr Wilding referred to the grounds of application and argued that the Judge had erred in law in his consideration of whether the Appellant was a genuine, present and sufficiently serious threat to public security. The Judge had failed to make a proper and holistic assessment of the threat which the Appellant posed. The Judge had only relied upon the fact that the Appellant had not reoffended since his release on bail. The

Judge had failed to take account of the Appellant's entire criminal history contained in the previous Determinations which were before the Judge. The Judge had not taken into account the Appellant's present circumstances such as his employment and financial position when considering whether the Appellant might reoffend again.

7. Mr Wilding then argued that as regards the Appellant's children, the Judge had not adequately explained his findings. For example, the Judge's finding as regards to the adverse affect upon his children of the Appellant's removal was restricted to one brief paragraph of the Decision, being paragraph 99. There was insufficient analysis of the care available to the children from a source other than the Appellant. The Judge had not considered in any depth the ability of the children's grandmother to look after them, nor the assistance available from outside agencies such as social services or the children's schools.

8. In response, Mr Chirico referred to his skeleton argument and submitted that there was no such errors of law. He reminded us that at the bail hearing in September 2011 it had been conceded by the Secretary of State that the Appellant was at a no more than low risk of reoffending. His conduct since then had shown that opinion to be correct. The Judge had considered all the relevant circumstances and had come to a conclusion which was open to him on the evidence. In particular, as regards the present risk, the Judge had taken into account the Appellant's changed attitude towards his offending. The Judge had correctly considered the Appellant to be rehabilitated.

9. As regards the effect upon the children of the Appellant's removal, the Judge had considered all the circumstances at the date of hearing. He had come to a correct conclusion that it would be unduly harsh to expect the children to relocate to Lithuania. They had been born in the UK and had spent very little time in Lithuania. The eldest child was now a British citizen, and neither child had a complete command of the Lithuanian language. The Judge had been right to find that the Appellant's removal would have a disproportionately adverse affect upon the Appellant's children.

10. We agree with the submissions of Mr Chirico that the Decision of the Judge did not contain an error on a point of law and therefore should not be set aside. We are satisfied that the Judge came to decisions which were open to him on the evidence before him and which he has adequately explained. The Judge acknowledged that the Appellant had committed a serious offence and set out at paragraph 70 of the Decision the comments of the Trial Judge. The Judge indicated by what he wrote at paragraph 75 of the Decision that he was aware of the Appellant's immigration history and also his previous offending. However the Judge noted at paragraph 80 of the Decision that the Appellant had now admitted his part in the offence, and based upon the fact that the Appellant had not reoffended since September 2011, the Judge was entitled to find that the Appellant was at a low risk of reoffending and also at a low risk of harm to the public.

Mr Wilding's argument that the Judge had given insufficient reasons for this conclusion is no more than a disagreement with his Decision and does not reveal an error of law.

11. As regards the position of the Appellant's children, the Judge fully explained at paragraphs 81 to 85 inclusive his finding that the children had been cared for by their father with the assistance of his mother since he returned to the family home following his incarceration. And the Judge went on to explain the nature and extent of the subsequent relationship between the Appellant and his children, and the Judge was entitled to find that the Appellant's mother would not be able to fill this role adequately since she did not speak English. There is sufficient reasoning of the Decision that it would be disproportionate to expect the children to relocate to Lithuania with their father bearing in mind their histories, and the Judge's opinion that it would be in the best interests of the children for them to be cared for by a parent rather than outside agencies cannot be faulted.

12. For these reasons, we find no error of law in the Decision of the Judge, and that Decision is confirmed.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

We do not set aside the decision.

Anonymity

The First-tier Tribunal made an order for anonymity. There was no application to us for it to be continued and we find no reason to do so. We therefore lift the order.

Signed Date

Upper Tribunal Judge Renton