Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/02037/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11 January 2016	**On 19 February 2016**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

G C

~~(~~anonymity direction not made)

Respondent

Representation:
For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer
For the Respondent: Mr A Ganejan, Counsel employed by Scarmans Solicitors

DECISION AND REASONS

1. The respondent to this appeal, hereafter "the claimant", is a citizen of Lithuania. He was born in June 1954 so is now 61 years old. He appealed successfully to the First-tier Tribunal a decision of the appellant, hereinafter "the Secretary of State", on 29 October 2014 to make him the subject of a deportation order.

2. The order says that the Secretary of State decided "pursuant to Regulation 19(3)(b) of the Immigration (European Economic Area) Regulations 2006,

that it is justified on the grounds of public policy to deport" the claimant from the United Kingdom.

3. The decision is explained in a supporting letter dated 29 October 2014. According to the letter on 22 October 2001 the claimant was convicted at the Vilnius Regional Court Lithuania of the offences of "organisation and management of and participation in criminal conspiracy", "extortion" and "aggravated murder". He was sentenced to nineteen years' imprisonment varied on subsequent appeals down to fourteen years' imprisonment. He was released on parole on 26 May 2010 subject to conditions of reporting. The letter noted that under Regulation 19(3)(b) of the 2006 Regulations the Secretary of State may deport an EEA national when that person's removal is justified on "grounds of public policy, public security or public health".

4. When considering the claimant's offending the letter referred to murder being a "particularly insidious offence" which was said to be "a subject of paramount concern to the public". The letter said how murder, in the opinion of the Secretary of State, can impact upon wider society by causing a climate of fear and insecurity and that the claimant had demonstrated through his actions that he was capable of causing harm to others. At paragraph 29 the Secretary of State said that "the nature of your offence shows that you have the potential to act violently."

5. At paragraph 25 the letter says:

> "While the Home Office has seen no evidence that you have repeated these very serious offences since your release from prison, it is considered that insufficient time has passed to establish that you no longer present a risk of doing so."

6. At paragraph 28 the letter asserts "you did not give any thought to the consequences of your actions" and at paragraph 29 the letter asserts "you appear to have given no consideration to the consequences of your actions."

7. I find these astonishing claims to make when at paragraph 24 the letter says "the circumstances of your offence are not known".

8. At paragraph 33 the Secretary of State said:

> "... all the available evidence indicates that you have the propensity to reoffend and that you represent a genuine, present and sufficiently serious threat to the public to justify your deportation on grounds of public policy."

9. I am not able to deduce from the letter what "available evidence" points to such a conclusion.

10. The letter then dealt with Article 8 of the European Convention on Human Rights and Section 117A to Section 117D of the Nationality, Immigration and Asylum Act 2002.

11. I do not criticise the Secretary of State for considering human rights separately. However this is essentially an EEA case and I see no need to look into the human rights of the claimant.

12. I am rather concerned by the second sub-paragraph of paragraph 49 of the letter which states:

> "Due to your criminal convictions in Lithuania you were refused submission to the UK on 10 March 2014 at Calais. You submitted an out of country appeal against this decision which has now been withdrawn as despite being refused entry at Calais your representative advised you entered the UK a few days later through Heathrow."

13. I do not understand what point has been made here. It is a fact that the claimant was refused admission at Calais and a fact that he had entered through Heathrow shortly afterwards. If it is the Secretary of State's case that the claimant has in some way been deceitful or acted improperly or worse then she should say what she means. This part of the letter looks more like gratuitous prejudice than part of a reasoned decision.

14. The claimant was not in the United Kingdom when his appeal was heard.

15. His wife gave evidence. Much of the First-tier Tribunal's determination considers that evidence which dealt with the history of their relationship and is of limited value. I do note that at paragraph 19 the Tribunal recorded the appellant's wife's evidence to the effect that the claimant did not understand why he was refused entry at Calais. He was aware that the Border Agency officers were shouting at him and gave him papers that he did not understand. I make no finding about this. I mention it in part because it demonstrates my concern about the criticisms in the refusal letter which are wholly unexplained. Nevertheless it was part of the appellant's wife's evidence that the appellant was not justly convicted but is the victim of the corrupt state.

16. The claimant's wife explained that his release from prison in Lithuania followed the payment of €20,000 to a solicitor in Lithuania who said that some of the money was to pay officials. It was the claimant's case that he was eligible for release but he had been refused release on two occasions and corrupt payment was necessary to facilitate his departure from prison.

17. These things enabled the Presenting Officer before the First-tier Tribunal to submit that the claimant has refused to accept his guilt, that he was willing to use bribery and his refusal to accept immigration decisions suggested a propensity to re-offend.

18. The First-tier Tribunal Judge rejected the contention that the claimant had not been guilty of the offences for which he was convicted.

19. At paragraph 46 of her decision the judge considered a judgment of the Kaunas Regional Court dated 26 May 2010 dealing with an appeal against

the claimant's application for release being refused. The judge quoted from a translation of the judgment and said:

> "During the period of the serving of the sentence, [the claimant] made five violations of the regime and was imposed with disciplinary penalties four times for their commitment. The last penalty was imposed on 15/02/2006, it was abolished on 04/09/2006. From this time onwards, the convict has not violated the Rules ... In contrast to the statements contained in the ruling under appeal, the correction on institution has not provided any data that [the claimant] participated in the mass disobedience campaigns of February 2009 ... the administration of the correctional institution positively characterises the convict ... and states that taking into account the personality, education, speciality and course of re-socialisation of the convict during the serving of the sentence, positive integration of the convict into society is likely ..."

20. The judge noted aspects of the evidence that she found to the claimant's discredit. It did not help the claimant's case that he continued to maintain his innocence. Neither did his re-entering the United Kingdom when entry had been refused.

21. The judge did not accept the account given by the claimant's wife that he did not understand what had happened. She clearly preferred the evidence in the report from a Border Agency officer that the claimant was very reluctant to admit that he had been convicted of murder and that his inability to understand English was selective.

22. Nevertheless the judge accepted that the claimant was a reformed character and said unequivocally at paragraph 48:

> "I cannot go so far as to find that the [claimant] is a genuine, present and serious threat to public policy. It is clear from the ruling from the court that the [claimant] was considered to be rehabilitated and to no longer be a threat to society."

23. The judge then also accepted evidence that the claimant had behaved himself in the United Kingdom and noted there was no evidence or even a suggestion of further convictions.

24. She found that the claimant's discreditable conduct in entering the United Kingdom was offset to some extent by his drawing himself to the attention of the authorities very soon after arrival. The judge found it much more telling that the claimant had not had any disciplinary problems with the prison since 2006, that he appeared to have complied with his conditions of probation and that he had not been convicted of any further offence.

25. The judge concluded that the respondent had not shown that there is a "genuine, present sufficiently serious threat to society" if the claimant remained in the United Kingdom. She concluded therefore that deportation was not in accordance with the Regulations and allowed the appeal.

26. It was the essence of the Secretary of State's case set out in the grounds that the judge had not explained adequately her finding that the claimant did not present a genuine, present and sufficiently serious threat to society.

27. The first point made under 1(b) is that the finding that the claimant had not committed offences since 2002 "flies in the face of the evidence" because the claimant had been involved with disciplinary proceedings in prison and then goes on that the judge failed to take account of the fact that one of the main reasons the claimant had not committed offences was that he had spent much of his time in prison.

28. This does not need detailed analysis. The fact there were disciplinary offences in prison does not mean there were any criminal offences committed. By the time the First-tier Tribunal heard the appeal the claimant had been at liberty for about five years which is a significant time for a person alleged to have a propensity to criminal activity to have been out of trouble and it is, I believe well-known, that the period immediately after release is one of the most difficult times for a person trying to give up life of crime.

29. Paragraph (c) complains that the claimant cannot be rehabilitated because he did not admit his guilt, (d) notes that the judge must have disbelieved the claimant and it is therefore hard to understand why she found his evidence and the evidence of those supporting him sufficiently compelling to outweigh the concerns raised by the Secretary of State, (e) says there was no evidence of rehabilitation measures and paragraph (f) asserts that the appalling criminal history itself reflects a sufficiently serious threat affecting one of the fundamental interests of society and complains that the judge has failed to explain why they were not considered to amount to a sufficiently serious threat.

30. Mr Tufan relied on these grounds.

31. He also submitted that the past conduct alone can amount to a sufficiently serious reason. Mr Tufan supported this with a reference to the decision of **R v Bouchereau (Case 30-77) [1978] 1QB 732** which was cited by the Court of Appeal in **SSHD v Straszewski [2015] EWCA Civ 1245**. This confirmed the theoretical possibility of past conduct alone amounting to a sufficiently strong reason and was in the context of a person who was convicted a second time for supplying banned drugs. However this is not really how the case was being put in the refusal letter and therefore not the case that had to be answered and in any event the Secretary of State is somewhat hampered by knowing little about the offences.

32. I did not accept it is a fair criticism of the judge to say that she did not explain why the offences in themselves were not sufficient to justify the claimant's removal.

33. I have considered the submissions by Mr Ganejan including his extensive skeleton argument.

34. Far from erring it seems to me that the judge is to be commended for keeping her eye on the ball. She did not allow herself to be distracted by complaints about the fact of the conviction or the harm done to the claimant's credibility by his lack of candour with the immigration authorities. She did what she was there to do which was to decide if the claimant presented a "genuine, present and sufficiently serious threat" to society.

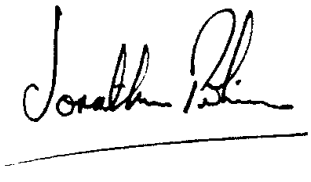
35. She noted that he committed very serious offences in 2002, that he had been released in 2010 and he had not committed any offences since then. He had lived discreetly in the United Kingdom and in Lithuania in accordance with his terms of probation. He had not reoffended.

36. Most significantly of all, the judge was impressed with the finding of the Lithuanian court that he was ready to be released. It seems to me this is possibly the most important part of the case. The authorities in Lithuania have decided that this man who has been convicted of serious offences is entitled to be released because of the way he had conducted himself subsequently and that his positive integration into society was likely. The judge was entitled to assume that the authorities in Lithuania would not be anxious to release somebody into their community who was thought dangerous. It is not a perfect equation but it is not perverse to find that a person who is fit to be released from imprisonment in Lithuania is not a sufficiently serious threat to society in the United Kingdom.

37. Far from erring in law I find that the judge has picked her way through conflicting strands of evidence and has concentrated on the point that matters and has reached an entirely rational conclusion which is explained adequately.

38. I therefore dismiss the Secretary of State's appeal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 16 February 2016