



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: DA/00209/2014

THE IMMIGRATION ACTS

Heard at Field House

On 19 October 2015

**Decision & Reasons
Promulgated**

On 2 November 2015

Before

UPPER TRIBUNAL JUDGE STOREY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

DARIUS GUDAITIS
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr S Walker, Home Office Presenting Officer

For the Respondent: Miss E Daykin, Counsel, instructed by Lawrence & Co Solicitors

DECISION AND REASONS

1. The claimant challenges a decision of First-tier Tribunal Judge Keane of 24 March 2015 allowing his appeal under the Immigration (European Economic Area) Regulations 2006. The claimant is a citizen of Lithuania who arrived in the United Kingdom in July 2008. On 29 May 2013 he was convicted of two counts of robbery and on 26 June 2013 was sentenced to terms in a young offenders' institution of eight months in respect of the first count and twenty months in respect of the second count, the terms to

run concurrently, making a total of twenty months. The respondent made a decision to make a deportation order on 15 January 2014. The grounds are essentially a challenge to the judge's finding at paragraph 11 that the claimant met the requirements of the 2006 Regulations "by reference to Regulation 21.3 of the Regulations".

2. If the issue in this case is whether the judge was right to consider that the claimant had acquired permanent residence the grounds would most certainly be made out for the reason that he had not shown by the evidence that he had been exercising Treaty rights for that period but that is in fact conceded and was always conceded by Miss Daykin both before the First-tier Tribunal and before me.
3. The judge's decision can be criticised for making reference to Regulation 21(3) which concerns the second level of protection, "serious grounds of public policy...". Not having acquired permanent residence the claimant was only entitled to be considered under the baseline level of protection which is simply "grounds of public policy...". In paragraphs 12 and 13 the judge also embarked confusingly upon an Article 8 assessment rather than an assessment under the terms of the 2006 Regulations.
4. Nevertheless I discern no shortcomings in the determination that are material. As Miss Daykin has pointed out, even in paragraph 11 where there is the mistaken reference to Regulation 21(3) the judge does not refer to a test of serious grounds of public policy but only to the baseline level of protection. (Misplaced reference to Regulation 21(3) can also in part be put down to the drafting of the Regulation which does not in any specific subparagraph refer to the baseline level of protection, although there is a specific reference to both the serious grounds provision and the imperative grounds levels of protection).
5. Further and more importantly, the judge in paragraphs 12 to 16 correctly proceeds to refer to the requirements contained in other provisions of Regulation 21 in particular the requirement of proportionality, the requirement of a present and sufficiently serious threat and the requirement in Regulation 21(6) of integration.
6. The judge's findings in relation to those other provisions of Regulation 21 are not as I understand matters challenged by the Secretary of State. In any event the judge's findings were adequately reasoned and properly based on the evidence that was before her, in particular (i) the fact that the sentencing judge as referenced in paragraph 15 was unequivocal in concluding he had no doubt that the claimant would not commit further offences, and (ii) the probation officer's assessment of the low risk that the claimant posed in respect of violent and non-violent offending. There were also findings of genuine expressions of remorse and of evident rehabilitation and social and cultural integration into the United Kingdom.
7. In light of those findings it was inevitable that a judge applying Regulation 21 based on the lowest level of protection would find that the deportation was in accordance with the Regulations.

Notice of Decision

8. Therefore I conclude that the challenge of the Secretary of State must fail and the decision of the First-tier Tribunal remains in place.
9. No anonymity direction is made.

Signed

Date

Dr H H Storey, Judge of the Upper Tribunal