



IAC-AH-DN-V1

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

Appeal Number: DA/01271/2012

THE IMMIGRATION ACTS

Heard at Field House

On 11 January 2016

**Decision & Reasons
Promulgated
On 9 March 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**TERESA GUDANAVICIENE
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

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

For the Respondent: Mr Markus, instructed by Turpin & Miller LLP

DECISION AND REASONS

- 1.** I shall refer to the respondent as the appellant and to the appellant as the respondent (as they appeared respectively before the First-tier Tribunal). The appellant, Teresa Gudnaviciene, was born on 31 May 1971 and is a female citizen of Lithuania. On 10 December 2012, the respondent decided to deport the appellant to Lithuania. On 7 September 2012, at Norwich Crown Court the appellant had been convicted of wounding with

intent to do grievous bodily harm. She was sentenced to eighteen months' imprisonment. She appealed to the First-tier Tribunal (Judge M Robertson) which, in a decision promulgated on 27 May 2015 allowed the appeal. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. I find that the Tribunal did not err in law such that its decision falls to be set aside. The grounds of appeal challenge the decision on the basis that the judge has referred to "serious" grounds for removing this appellant to Lithuania at [88] and [13]. It had been accepted by both parties that the appellant had not acquired a right of permanent residence in the United Kingdom. However, (as the Rule 24 statement indicates) the judge has not referred at any point in her decision to "imperative grounds." I agree with Mr Markus, who appeared for the appellant, that the reference in the determination to "Regulation 21(4)" is a "slip" and does not represent a misunderstanding or misapplication of the law on the part of the judge. I find also that the judge at [14] has correctly applied the approach to "public policy" as enunciated in *Bouchereau* (C-30/77).
3. Mr Markus submitted that the assertion made in the grounds of appeal (that the appellant still poses a risk to her ex-partner [7]) was an argument which had not been pursued before the First-tier Tribunal. Mr Markus submitted that the Presenting Officer before the First-tier Tribunal had conceded that the appellant had presented a low risk of violent re-offending. Before the Upper Tribunal, Mr Walker did not disagree with that submission. As Mr Markus pointed out, the burden of proving that the appellant represented a genuine present and sufficiently serious threat to public policy by remaining in the United Kingdom was, in essence, impossible to discharge in the light of the evidence of the appellant herself (which had not been challenged) the probation services and the expert, Dr Kelland, evidence which fully supported the judge's finding that the appellant represented a low risk to her former partner.
4. Finally, I do not agree with the Secretary of State that Judge Robertson has allowed any sympathy for the position of the appellant to sway her decision in any way. The judge's decision is a model of objective and clear cited reasoning. In any event, given the agreed facts in this appeal, it is difficult to see how the judge could have reached any other conclusion.

Notice of Decision

5. This appeal is dismissed.
6. No anonymity direction is made.

Signed

Date 20 February 2016

Upper Tribunal Judge Clive Lane