Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00609/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 23 November 2021	**On 20 January 2022**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ARVYDAS VAICKUS
(no anonymity order)

Respondent

Representation:
For the Appellant: Ms J Isherwood, Senior Home Office Presenting Officer.
For the Respondent: The Respondent appeared in person.
The Respondent was assisted by his brother, who acted as a "McKenzie Friend".

DECISION AND REASONS

1. This is an appeal brought by the Secretary of State against a decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter "the claimant", against the decision of the Secretary of State on 3 September 2019 to deport him from the United Kingdom and that deporting him was not contrary to the United Kingdom's obligations under the European Convention on Human Rights. The claimant is a citizen of Lithuania and so has treaty rights as an EEA national which he was exercising. Mainly these are set out in the Immigration (European Economic Area) Regulation 2016.

2. The First-tier Tribunal accepted the claimant's evidence that he first entered the United Kingdom in 2001 and the respondent's evidence that he came to the attention of the Home Office on 1 July 2001 because he made application for leave to remain. There were difficulties with the application and he made a further application in January 2002 leading to his being given leave to remain for twelve months which was extended.

3. The claimant was in trouble with the police in May 2003 when he was cautioned for possessing an article with a blade or point in a public place.

4. Lithuania joined the EU on 1 May 2004, so the claimant was no longer subject to immigration control.

5. On 13 March 2006 he was convicted at the Halesowen Magistrates' Court of driving with excess alcohol for which he was banned from driving and ordered to pay financial penalties. In 2006 at the Warley Magistrates' Court he was convicted of driving whilst disqualified and driving whilst uninsured. He was further disqualified from driving and ordered to do unpaid work for the community for 150 hours as well as to pay financial penalties. In June 2008 he was cautioned for common assault.

6. He says he left the United Kingdom in 2009 and married a citizen of Ukraine in 2008 and lived in the Ukraine until returning to the United Kingdom in 2015.

7. They were difficulties but he was given an EEA registration certificate in September 2018.

8. In December 2018 he was convicted at the Crown Court sitting at Stoke-on-Trent on two counts concerning possessing a controlled drug and he was sentenced to a total of three years' imprisonment. He was warned that he faced deportation and was deported on 14 January 2020.

9. As is plain from paragraph 19 of the Decision and Reasons, the First-tier Tribunal appreciated that the claimant was involved in the production of cannabis on an extensive scale and noted the sentencing judge said that he played a "significant role" in the offence.

10. It was the Secretary of State's case that the claimant had produced no evidence that he had sought to address his offending, for example by attending drug awareness courses, and further indicated that such courses were of very limited value in assessing future behaviour away from prison in any event.

11. The judge noted that the Secretary of State had no reason to allow the application on Article 8 grounds. The judge then addressed his mind to the law noting, correctly, the particular restrictions on deporting an EEA national exercising treaty rights. The judge also directed himself about Part 5B of the Nationality, Immigration and Asylum Act 2002. The judge found that the claimant was entitled to only the lowest level of protection from deportation for an EEA national which the judge described correctly

as a decision "justified on grounds of public policy, public security or public health in accordance with [the Regulations]". The judge also reminded himself, again correctly, that the decision had to be proportionate.

12. The claimant was imprisoned in December 2018 and deported to Lithuania in early 2020 before he completed his sentence.

13. The judge noted that he had been given no evidence that the claimant, a 55 year old man, was suffering from any health problems or receiving medical treatment in the United Kingdom. The judge accepted that the claimant was married and that his wife lived in the United Kingdom when the judge heard the case or at least in January 2020. The judge also noted that the claimant's criminal record, although in no way to his credit, was not related to drugs except for the most recent offence. The judge found nothing to suggest that the appellant had a propensity toward serious crime other than the offences that had led to his imprisonment.

14. The judge also gave weight to a prison service document showing that he had behaved well in prison

15. The judge did not accept that the claimant's past conduct was so serious that deportation was justified and particularly did not accept that the claimant "poses a genuine, present and sufficiently serious threat to society". He allowed the appeal under the EEA Regulations.

16. The judge was not impressed with the claim on Article 8 grounds and found that the claimant and his wife could establish themselves in another country and that the decision would not be disproportionate were it not a decision he decided was justified under the Regulations.

17. The grounds complain that the judge had not given sufficient reasons for finding that the claimant did not pose a genuine, present and sufficiently serious threat. That was the only point taken.

18. Permission to appeal was given by Upper Tribunal Judge Grubb although I note it was refused before that by Resident Judge of the First-tier Tribunal Judge Zucker. If I may say so respectfully, both very experienced judges.

19. Judge Grubb found it was arguable that the finding under the EEA Regulations was not reasoned adequately. Ms Isherwood took that point and did her best with it. The difficulty is that there was not much for her. The judge, as she accepted, had looked in all the relevant places and understood the points and had given reasons.

20. The point can be dealt with very simply. I am quite satisfied that this is a case where the judge directed himself correctly and reached decisions that were open to him on the material that was before him. He has given reasons. The judge did not find the past conduct as significant or helpful. The judge did not find any reason to find that there was any real risk of serious criminal behaviour being repeated. That finding was at the very least open to the judge and that is sufficient. This might be a case that

could have been decided differently on the same facts but that does not mean that the decision that was made is unlawful.

21. As I indicated in the hearing room, this is an appeal that must be dismissed as the Secretary of State has not shown any material error and I dismiss the appeal.

Notice of Decision

22. The appeal is dismissed.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal Dated 19 January 2021