



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00808/2012

THE IMMIGRATION ACTS

Heard at Field House
On 7 October 2013

Determination Promulgated
On 14 October 2013

Before

UPPER TRIBUNAL JUDGE WARR
UPPER TRIBUNAL JUDGE O'CONNOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ALEXSANDER MAHOV

Respondent

Representation:

For the Appellant: Mr G Saunders, Senior Home Office Presenting Officer

For the Respondent: Ms A Pickup, instructed by Wilson Solicitors LLP

DETERMINATION AND REASONS

Introduction

1. For the sake of convenience we shall refer to Mr Mahov as “the claimant” herein.
2. This is an appeal against a decision of the First-Tier Tribunal (First-Tier Tribunal Judge Davidson and Mrs J Holt [non-legal member]), promulgated on 2 July 2013, allowing an appeal against a decision of the Secretary of State for the Home

Department of 10 August 2012 to remove the claimant to Latvia pursuant to regulation 19(3)(b) of the Immigration (European Economic Area) Regulations 2006 [‘2006 Regulations’] (and thus him being treated as if he were a person to whom sections 3(5)(a) and 5 of the Immigration Act 1971 apply [regulation 24(3) of the 2006 Regulations]).

Relevant Legal Framework

3. The relevant provisions of the 2006 EEA Regulations state as follows:

Exclusion and removal from the United Kingdom

19. –

(3) Subject to paragraphs (4) and (5), a person who has been admitted to, or acquired a right to reside in, the United Kingdom under these Regulations may be removed from the United Kingdom if –

...

(b) he would otherwise be entitled to reside in the United Kingdom under these Regulations but the Secretary of State has decided that his removal is justified on the grounds of public policy, public security or public health in accordance with regulation 21.

Decisions taken on public policy, public security and public health grounds

21. –

(1) In this regulation a “relevant decision” means an EEA decision taken on the grounds of public policy, public security or public health.

(2) A relevant decision may not be taken to serve economic ends.

(3) A relevant decision may not be taken in respect of a person with a permanent right of residence under regulation 15 except on serious grounds of public policy or public security.

(4) A relevant decision may not be taken except on imperative grounds of public security in respect of an EEA national who –

(a) has resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision; or

(5) Where a relevant decision is taken on grounds of public policy or public security it shall, in addition to complying with the preceding paragraphs of this regulation, be taken in accordance with the following principles –

(a) the decision must comply with the principle of proportionality;

(b) the decision must be based exclusively on the personal conduct of the person concerned;

(c) the personal conduct of the person concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society;

(d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;

(e) a person’s previous criminal convictions do not in themselves justify the decision.

(6) Before taking a relevant decision on the grounds of public policy or public security in relation to a person who is resident in the United Kingdom the decision maker must take account of considerations such as the age, state of health, family and

economic situation of the person, the person's length of residence in the United Kingdom, the person's social and cultural integration into the United Kingdom and the extent of the person's links with his country of origin.

First-tier Tribunal's determination – a summary

4. It is not in dispute that the claimant is a national of Latvia born 14 January 1985. He first entered the United Kingdom on 21 April 2007 and has, since that date, managed to accumulate convictions for 35 offences; many of which were met with short sentences of imprisonment. Full details of the claimant's convictions are set out in paragraph 2 of the First-tier Tribunal's decision. Most recently he was, on 11 February 2011, convicted of Theft (shoplifting) and sentenced to 16 weeks imprisonment. Thereafter, he was again convicted of Theft (shoplifting) on the 20 May 2011 and sentenced to 26 weeks imprisonment and was further convicted of the same offence on 25 August 2011, on this occasion being sentenced to a term of four months imprisonment.
5. The First-tier Tribunal found the claimant not to have a permanent right of residence in the United Kingdom and that his removal could, consequently, be justified on public policy grounds [36]. When considering whether such justification had been made out, the tribunal accepted the Secretary of State's assertion that the claimant presented a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society but concluded that his removal to Latvia would not be proportionate [44]. It therefore allowed the claimant's appeal on "immigration grounds" [48]. Given the reasoning which precedes such conclusion it is accepted that the tribunal intended to allow the appeal on the basis that the Secretary of State's decision would lead to a breach of the claimant's rights under the Community Treaties.
6. The tribunal also went on to consider the claimant's appeal on article 8 ECHR grounds, allowing it on the basis that 'deportation' would be a disproportionate interference with his private life; ostensibly the same reasons it allowed the appeal in relation to the 2006 Regulations [46-55].

Grounds of challenge

7. The Secretary of State's pleaded grounds, in summary, challenge the decision of the First-tier Tribunal on the basis that it erred;
 - (i) By failing to provide adequate reasons for its conclusion that the claimant will not re-offend in the future [paragraph 1 of the grounds];
 - (ii) By failing to provide adequate reasons for its conclusions that; (i) the claimant's mother, who lives in Latvia, could not support him if he is returned there [paragraph 2] (ii) the claimant is less likely to find work in Latvia than in the United Kingdom [paragraphs 2 - 3] (iii) the prospect of the claimant's rehabilitation would be lower in Latvia [paragraph 4] (iv) the facilities in the United Kingdom for assisting those with drug addiction are better than those

which exist in Latvia [paragraph 5], (v) the claimant suffered a traumatic event in Latvia [paragraph 13] and (vi) the claimant's partner and children were killed in a road accident in the United Kingdom [paragraph 13].

- (iii) By misdirecting itself in law when considering the availability of medical care for the claimant in Latvia [paragraph 6 - 12].

Discussion on Error of Law

8. The First-tier Tribunal found the claimant not to be a person who had resided continuously in the United Kingdom for a period of five years in accordance with the 2006 Regulations and, consequently, concluded that a decision to remove him could be justified on a public policy grounds (as opposed to serious grounds of public policy or imperative grounds of public security) [36].
9. In relation to the prospects of the claimant reoffending the tribunal state as follows [37]:

“[T]he threat we perceive is that if, and when, he is released, and does not manage to control his drug use, then he will return to a life of using illegal drugs, with the almost inevitable consequential serial theft and shoplifting to obtain the money to pay for drugs, as has happened in the past.”
10. Having first referred to the conclusory paragraph of a psychiatric report authored by Dr Lavender [38], the tribunal state [39 & 40];

“...[w]e feel bound to find that, as a serial shoplifter, and the likelihood that he will relapsed into drug use, and the same behaviour as previously, the threat he poses to society by the possible continuation of his life of drug use, and consequent theft, does pose a threat to the interests of public policy, which makes him liable to deportation...”

[W]e are satisfied that our decision would be based solely on the personal conduct of the appellant, which we accept presents a genuine, present and sufficiently serious threat affecting the fundamental interests of society, viz. law and order, because of the likelihood of his relapsing, as described by Dr Lavender in his report;...”
11. Given the passages set out above, it is plain that paragraph 1 of the Secretary of State's grounds is based on a misapprehension of the findings of the First-tier Tribunal. Contrary to the premise of paragraph 1 of the grounds, the tribunal determined the appeal on the basis that there was a risk of the claimant reoffending.
12. Paragraphs 2, 3, 4 and 13 of the grounds generally challenge findings of the First-tier Tribunal on the basis that such findings are not underpinned by the required sufficiency of reasoning. Those paragraphs also assert matters of fact which, it is said, ought to have led the tribunal to come to alternative conclusions in the Secretary of State's favour.
13. The tribunal found the claimant generally to be a credible witness. It particularly accepted the claimant's evidence (i) that it is his intention to rid himself of his drug

addiction [26], (ii) that his father and stepmother were shot whilst out shopping in Latvia in 2006 and that as a consequence he suffers from Post-Traumatic Stress Disorder resulting in, *inter alia*, intermittent flashbacks [29] (iii) that his mother would provide little support to him if he were returned to Latvia, because she has problems of her own [42], and (iv) that both his UK based partner and the couple's twins were killed in a road accident in the United Kingdom in 2009 [30].

14. During his submissions Mr Saunders maintained that the First-tier Tribunal had erred in failing to provide adequate reasons for its findings. We reject this submission.
15. Neither the Secretary of State's pleaded grounds, nor the submissions of Mr Saunders, sought to highlight any particular feature of the evidence before the First-tier Tribunal that it was said ought to have led it to doubt the truthfulness of the claimant's assertions of fact, save that it was observed that the claimant failed to produce evidence to corroborate his account.
16. The First-tier Tribunal was required to provide reasons for its conclusions on the central issues on which the appeal was determined. Its reasons need not be extensive if the decision as a whole makes sense and the losing party can ascertain why they lost. Even if a determination of the First-tier Tribunal contains an error of law because the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside such decision where (i) there has been no misdirection of law or (ii) the fact-finding process cannot be criticised, unless the conclusions that the First-tier Tribunal drew from the primary data before it were not reasonably open to it [Shizad (sufficiency of reasons; set aside) [2013] UKUT 00085].
17. In the instant appeal the First-tier Tribunal came to its conclusions having considered the entirety of the documentary evidence before it [11] and having heard the claimant give lengthy and detailed oral testimony, including evidence adduced under cross-examination by the Secretary of State's representative [12 - 25]. It is not said that there were serious inconsistencies in the claimant's evidence, or that the assertions he made were wholly implausible such that they were not capable of belief. Although the claimant did not produce evidence directly corroborating his account, he did produce medical evidence, including a psychiatric report prepared by Dr Lavender, which, as the tribunal identified, was consistent with the account he gave.
18. In our view the First-tier Tribunal was entitled to find the claimant to be a witness of truth, indeed it is difficult to see that it could have found otherwise on the available evidence. Having done so the tribunal was entitled to come to the conclusions of fact challenged in paragraph 2, 3, 4 and 13 of the grounds. Insofar as those paragraphs assert that the tribunal ought to have come to alternative conclusions, such a challenge amounts to no-more than a disagreement with the tribunal's findings. We do not accept the tribunal's findings were perverse and consequently any challenge brought in relation to them must fail.

19. Turning to the First-tier Tribunal's treatment of the claimant's medical conditions, the Secretary of State does not challenge the tribunal's acceptance of Dr Lavender's evidence as to claimant's mental health problems [29], nor was the claimant's addiction to Class A drugs in dispute.
20. The Secretary of State's submits that the tribunal's conclusion, that the facilities available in the United Kingdom to assist the claimant with his health issues are better than those available in Latvia, was inadequately reasoned and wrong. As an alternative, the Secretary of State asserts that the First-tier Tribunal misdirected itself in law when taking into account the lack of medical care available to the claimant in Latvia; relying when doing so on the decisions in MM (Zimbabwe) v Secretary of State for the Home Department [2012] EWCA Civ 279 and GS and EO (Article 3 – health cases) India [2012] UKUT. She submits that it is established principle that there is no obligation on the United Kingdom to provide those liable to deportation with medical treatment that is lacking in their home countries (as per N v Secretary of State for the Home Department [2005] 2 AC 296)
21. The pleaded grounds also direct the reader's attention to lengthy extracts from a report of 27 May 2013, relating to drug treatment facilities in Latvia, authored by the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). This report was not before the First-tier Tribunal in its full form, but was summarised within a Home Office Country of Origin Information Response, dated 29 May 2013 ('COI report').
22. The quoted passages indicate that addiction treatments in Latvia are generally state funded, although there are also private institutions providing such treatment; that there are 41 outpatient addiction specialist treatment institutions as well as inpatient treatment available in specialised psychiatric hospitals, regional multi-profile hospitals and other medical institutions. Two specialised psychiatric centres in Latvia provide long-term medical rehabilitation. Since 2010 nine opioid maintenance treatment offices, in five cities, operate multi-disciplinary rehabilitation teams providing methadone maintenance treatment. Opioid substitution treatment is also available within the Latvian prison system.
23. The First-tier Tribunal took into account the May 2013 COI report when coming to its conclusions [9 & 11]. It did not proceed, as appears to be the premise behind the Secretary of State's grounds, on the basis that the claimant would not have access to relevant medical facilities in Latvia but rather that there are 'better' medical facilities available in the United Kingdom for treating his medical condition as a whole.
24. The claimant's medical requirements are not restricted to his need for treatment for his drug dependency. The findings of the First-tier Tribunal must be viewed as a whole and in particular in the context of its acceptance of Dr Lavender's evidence that (i) the claimant has Post Traumatic Stress Disorder and (ii) deporting him to Latvia would lead to a deterioration in his mental illness. When looked at in this context it cannot be said that the findings of the First-tier Tribunal were inconsistent with the evidence referred to in the Secretary of State's grounds, nor did Mr

Saunders draw our attention to any other evidence that could be said cast doubt on the lawfulness of the First-tier Tribunal's conclusion. We find such conclusions were open to the First-tier Tribunal.

25. As to the Secretary of State's alternative submission, the cases cited in the grounds are of no import on the facts on the instant appeal, and her reliance on the submission derived from the decision in N v Secretary of State is entirely misplaced.
26. Neither of the cited cases, nor the decision in N v Secretary of State, considers removal/deportation in a European Union (EU) law context. This is significant given that consideration of the issue of proportionality, when removal is of an EU citizen within the EU, has an entirely different emphasis; the decision maker being required to consider not only the interests of the United Kingdom but also of the European Union as a whole (Secretary of State for the Home Department v FV (Italy) [2012] EWCA Civ 1199. This, of itself, is sufficient to dispose of the Secretary of State's grounds pleaded in this regard.
27. In any event, neither of the cited authorities provides support for the contention that the lack of "*equivalent medical care*"¹ in the country to which a person is to be removed is an irrelevant matter in the consideration of proportionality, even in a pure article 8 context, nor do they seek to restrict its relevance to only to circumstances where "*an individual's personal ties to the UK have a direct bearing on their prognoses*"² (see for example paragraph 23 of judgment of Moses LJ in MM).
28. Under regulation 21(6) of the 2006 Regulations, the decision maker is required to take into account various considerations. These considerations are not expressed as an exhaustive list and in our view regulation 21(6) is wide enough to include within it a consideration of the availability of relevant medical care in a persons EU country of origin.
29. In our conclusion, when looked at as a whole, the reasons given by the First-tier Tribunal for allowing the claimant's appeal pursuant to the 2006 Regulations are adequate, clear and cogent. We do not accept the tribunal took into account any irrelevant matters, neither did it fail to take into account any matters of relevance. Whilst we may not have to come to same conclusion had we been required to determine the appeal *de novo* for ourselves, we are in no doubt that the First-tier Tribunal were entitled to come to the conclusion it did. It is not our function to replace the First-tier Tribunal's conclusions with those of our own, unless we first find the First-tier Tribunal to have erred in a material manner such that its determination is required to be set aside. That is not the case in the instant appeal and its conclusions made in relation to the 2006 Regulations must stand.
30. As regards article 8 ECHR, we need say no more than given the tribunal's findings made in relation to the 2006 Regulations, its conclusion on the article 8 grounds was inevitable.

¹ Paragraph 6 of the Secretary of State's grounds.

² Paragraph 8 of the Secretary of State's grounds.

Decision

For the reasons given above we find that the determination of the First-tier Tribunal does not contain an error on a point of law such that it ought to be set aside and, consequently, direct that it shall stand.

Signed:

A handwritten signature in black ink, appearing to read 'M. O'Connor', written over a faint, illegible stamp or watermark.

Upper Tribunal Judge O'Connor
Date: 9 October 2013