



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

Appeal Number: DA/01685/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 21 April 2015**

**Determination Promulgated  
On 23 April 2015**

**Before**

**Upper Tribunal Judge Southern**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**THOMAS BALIUKONIS**

Respondent

**Representation:**

For the Appellant: Ms A Figiwala, Senior Home Office Presenting Officer  
For the Respondent: Mr C. Lam, counsel instructed by Edward Marshall solicitors

**DETERMINATION AND REASONS**

1. The Secretary of State for the Home Department has been granted permission to appeal against the decision of a panel of the First-tier Tribunal (Judge Archer sitting with a non-legal member of the Tribunal) who, by a determination promulgated on 18 August 2014, allowed the respondent's appeal against a decision to make a deportation order. That deportation decision was made as a consequence of his conviction before the Snaresbrook Crown Court of an offence of assault occasioning actual bodily harm, the victim of that offence being the respondent's long term partner. Both are citizens of Lithuania who arrived together in the United Kingdom in August 2004 since when they have remained here and they now live as a family unit together with their son, who was born in April 2011.

2. As the respondent is an EEA national the deportation decision made under s5(1) of the Immigration Act 1971 was informed by the provisions of the Immigration (EEA) Regulations 2006.
3. In the determination the panel set out a summary of the respondent's relevant history:

"The appellant first came to adverse attention on 5 August 2008 for failing to surrender to custody at Inner London Crown Court; he was subsequently sentenced to 7 days imprisonment. He was not convicted of possession of a bladed article. He was then convicted at Snaresbrook Crown Court for assault occasioning actual bodily harm. He was sentenced to 16 months imprisonment. The respondent wrote to the appellant on 15 May 2013 requesting evidence of continuous residence in the UK. He supplied various documents in response and the respondent accepts that they show that he was working in the UK between December 2004 and November 2006 and then April 2011 to April 2012. That is not a continuous period of five years. He has not acquired a permanent right of residence in the UK."

There followed a summary of the offence that led to the decision; the background fact relating to it and the respondent's reasons for concluding that a deportation decision was justified:

"The victim of the offence was Agne [the appellant's partner] and the assault was prolonged and resulted in serious injury. The appellant is subject to MAPPA level 1 monitoring. The offender manager who completed the NOMS 1 found that the appellant posed a medium risk of harm to women with whom he formed a relationship. The victim must have been traumatised. The sentencing judge indicated a number of aggravating features. The offender manager noted that the risk of reoffending would increase if the appellant should be reconciled with the victim. The appellant has a tendency to commit offences whilst under the influence of alcohol. There is no evidence of any offending behaviour courses. The appellant represents a genuine, present and sufficiently serious threat to justify his deportation. The 5 and 10 year tests would also be satisfied. The decision is proportionate. There is no one to assist the appellant with rehabilitation in the UK."

4. Having made clear that the seriously aggravating features of the assault had been recognised, the panel noted that the respondent's partner had not sought a restraining order. The NOMS report was written on the basis that she wanted nothing more to do with the respondent but that was not the case. In oral evidence the respondent's partner made clear that the relationship had at no stage been ended. She had visited him frequently while he was serving his prison sentence and said that she had forgiven him and that he should be given another chance. It was plain that she saw their future as living together as a family unit and the respondent had agreed to seek help for his excessive drinking. He had a good chance of securing work again as a bricklayer.
5. The panel then recorded the following clear findings:

" We find that the relationship between the talents and Agne is genuine and subsisting. Agne has maintained the relationship whilst the appellant has been imprisoned through regular contact and visits. The parties have discussed the thoughts and wish to continue with the relationship. They will seek help from social services and the appellant has recently taken the positive step of completing the AIM course..... Preceding the index offence there was no history of offending and the appellant has not established a history of offending. The risk of serious harm is medium but limited to physical violence to Agne and other women with whom he develops a relationship and known adults.

...

We consider that the risk of further offending is low. Agne is at some risk of repeated domestic violence but is fully aware of the risk and both parties intend to seek help before the appellant returns home. We accent that the appellant is not a generally violent man and has behaved kindly to the children and his cousin."

6. The key findings that led to the decision to allow the appeal are set out between paragraphs 27-30 of the determination, with emphasis added:

"Against that factual background, we go on to consider the requirements of the Regulations. We have not seen comprehensive evidence of exercising Treaty rights from 2006 to 2013 in the form of payslips, bank statements and P 60s. The appellant accepted in oral evidence that he lived off Agne's income for a period when he was out of work. However, the respondent does not dispute that the appellant is a bricklayer and that he has worked in the UK. The respondent accepts that Agne has worked continuously in the UK since 2007 and that the parties have been in a durable relationship. We find on balance of probabilities that the appellant has resided continuously in the UK for a period of 5 years in accordance with the Regulations, either as a worker or a jobseeker. The standard for removal is therefore high for this appellant because he falls within the second level of EEA nationals. He can only be removed on serious grounds of public policy or public security. We emphasise that we would have reached the same decision even if the appellant had only fallen in the first level of EEA nationals.

... We recognise that for any deportation of an EEA national to be justified on public good grounds then the claimants must constitute a present threat. The fact of a criminal conviction is not enough and deterrence principles are irrelevant. A candidate for EEA deportation must represent a present threat by reason of propensity to reoffend or an unacceptably high risk of re-offending. We have not seen any evidence of propensity or such a risk of reoffending.

... We find that the appellant does not constitute a present threat and is well advanced in rehabilitation in a host state where there is a substantial degree of integration. Taking all of our findings into account, we therefore conclude that the tests in paragraphs 21 (three) and 21 (five) of the regulations are not met. The decision does not comply with the principle of proportionality."

7. Permission to appeal having been refused upon application to the First-tier Tribunal, the grounds for renewing that application were:

" The finding that the appellant has gained permanent residence in the UK (see paragraph 27) is inadequately reasoned. The SSHD did not accept that the appellant had the requisite period of qualifying residence in the UK and it is arguably inadequate to merely reflect on the appellant's partners status to conclude, for example, that the appellant was also genuinely seeking work when subsisting from her earnings. It is also noticeable that the appellant was not resident in the UK 2004 to 2006."

8. The respondent's representatives have submitted a response to the grant of permission in which they say:

" The panel has also made it very clear in paragraph 27 that they would have reached the same conclusion even if the appellant had only fallen in the first level of EEA nationals. It is therefore submitted that whether the appellant was a worker or a permanent resident is largely irrelevant."

9. For the appellant, Ms Vigiwala accepts, realistically, that the finding in the alternative made by the panel is a complete answer to the challenge brought in respect of which permission was granted. Given that the panel has made clear that the outcome would have been the same even if they were wrong to find that the

respondent had acquired a permanent right of residence, the challenge raised by the grounds is simply unarguable and the appeal to the Upper Tribunal cannot succeed.

Summary of decision:

10. The First-tier Tribunal made no error of law and the determination shall stand.

11. The appeal to the Upper Tribunal is dismissed.

Signed

A handwritten signature in black ink, appearing to read 'P. Baker', with a horizontal flourish extending to the right.

Upper Tribunal Judge Southern

Date: 21 April 2015