



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

Appeal Number: IA/05679/2015

THE IMMIGRATION ACTS

**Heard at Glasgow
on 15 June 2015**

**Decision and Reasons
Promulgated
On 24 June 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR VALDES GENYS

Respondent

Representation

For the Appellant: Mrs M O'Brien, Senior Presenting Officer

For the Respondent: Mr S Winter, Advocate, instructed by Maguire, Solicitors

DETERMINATION AND REASONS

1. The parties are as described above, but the rest of this determination refers to them as they were in the First-tier Tribunal.
2. The SSHD appeals against a determination by First-tier Tribunal Judge JC Grant-Hutchison, promulgated on 1 April 2015, allowing the appellant's appeal against deportation under the Immigration (European Economic Area) Regulations 2006.
3. The first ground of appeal runs that it is clear from the appellant's evidence that he lied in the Sheriff Court about his offence, as compared with his evidence recorded in the determination; the determination contains no finding on his credibility, and the effect of his dishonesty is not integrated into the assessment of future risk; the finding that he is unlikely to re-offend is thus inadequately reasoned.

4. Further to this ground, the Presenting Officer said the Judge failed to engage with the appellant's disavowal of his guilt and her findings on his reform were therefore deficient.
5. Ground 2 is posed as inadequate reasoning or irrationality. The respondent's decision letter finds that the appellant's offence of breaking into a home and assaulting a party there would have had long term traumatic effects on the victim (more accurately, perhaps, the victim's partner who was then pregnant). The Judge is said to have speculated and wrongly to have required the Secretary of State to provide evidence on this point.
6. Further to ground 2, Mrs O'Brien said that the Judge should not have looked for further evidence and that the matter spoke for itself as to the likely effect on those affected by the offence.
7. Ground 3 says that it was wrong for the Judge to rely on protective factors militating against further offending, when at least three if not all four of those factors applied prior to the most recent offending.
8. Mrs O'Brien said that this ground showed that the Judge's reasoning fell away.
9. Mr Winter submitted that the grounds aimed essentially at a finding of irrationality, which was a very demanding target. He said that read fairly and as a whole the determination was not perverse or irrational. He went through the Judge's consideration of the appellant's previous offences, accommodation, family support, wife's and mother's influence, employment record, situation in Lithuania, family and friends here, and so on. The Judge balanced all the relevant factors and reached an outcome which was well within the reasonable range. On the specifics of the grounds, Mr Winter submitted on the first that although he pled not guilty the appellant later expressed his regret for his offending. There was no disavowal of his guilt. It was not uncommon for someone to plead not guilty and go to trial yet later to acknowledge guilt. As to ground 2, while it might well be inferred that the offence would have an adverse effect on those affected, the Judge was entitled to observe that there were no reports of injuries suffered or evidence of the effect on the victim's pregnant partner. That was simply a correct narration of the facts. If the evidence was not there, the Judge was entitled to say so. As to ground 3, the factors relied upon had been present before the offence, but the Judge acknowledged that in her determination. She looked at all the factors on both sides, did not misdirect herself, had regard to the relevant case law, and made no material error.
10. I indicated that I was not satisfied that there was any error such as to require the determination to be set aside.
11. Broadly, I prefer the submissions for the appellant, as summarised above.
12. There is sense in the passage in the decision letter regarding the likely impact on those affected by the appellant's offending, but it does go

rather far in the absence of specific evidence. The Judge was entitled to point that out, even if to characterise the passage as “pure speculation” went a bit far in the opposite direction. This is not enough of a point to overturn the determination.

13. The rest of the grounds do not amount to more than re-argument on the facts. The decision is one which the Judge was entitled to reach, and reading her determination fairly and as a whole she has given legally adequate reasons for coming down on the side she did.
14. The determination of the First-tier Tribunal shall stand.

A handwritten signature in black ink, appearing to read "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

19 June 2015
Upper Tribunal Judge Macleman