



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DA/00087/2019

THE IMMIGRATION ACTS

Heard remotely at Field House  
On 18<sup>th</sup> June 2020

Decision & Reasons Promulgated  
On 30<sup>th</sup> June 2020

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

FELIKSAS GRIGAS  
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms L Hirst, instructed by Wilson Solicitors  
For the Respondent: Mr L Lindsay, Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle of 154 pages, the contents of which I have recorded. The order made is described at the end of these reasons.

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State, I shall refer to the parties as in the First-tier Tribunal. The Appellant is a citizen of Lithuania born on 15 August 1988. His appeal against the decision to deport him under the Immigration

(EEA) Regulations 2016 [2016 Regulations] was allowed by of First-tier Tribunal Judge S C Clarke on 13 January 2020.

2. The Secretary of State for the Home Department applied for permission to appeal on the following grounds:
  - (i) The judge failed to have adequate regard to the Appellant's most serious offence of sexual assault of a minor for which he was convicted in Lithuania on 12 December 2007 and sentenced to a term of imprisonment of six years;
  - (ii) The judge failed to consider the serious consequences of re-offending in line with Kamki [2017] EWCA Civ 1715. Given the seriousness of the Appellant's offending over a period of 13 years, the judge failed to consider why the Appellant's lack of offending since he came to the UK in November 2018 would yield a durable change sufficient to minimise the risk of re-offending;
  - (iii) Given the independent assessment of a medium risk of re-offending and in light of the serious nature and pattern of offending behaviour, the judge erred in finding that the Appellant did not represent a genuine present and sufficiently serious threat to one of the fundamental interests of society;
  - (iv) The judge failed to have regard to Schedule 1 of the 2016 Regulations;
  - (v) The judge failed to have regard to Bouchereau;
  - (vi) The judge failed to have regard to the fact that the Appellant continued to offend during his relationship with his current partner in concluding his relationship was a protective factor against future re-offending.
3. Permission to appeal was granted by Designated First-tier Tribunal Judge Woodcraft on all grounds on 29 January 2020. He stated: "It is arguable the judge has failed to have sufficient regard to the factors set out in the 2016 Regulations."

### **Appellant's convictions**

4. The Appellant has 9 convictions for 11 offences from 2005 to 2017, including a serious sexual assault on a minor in 2007 and possession of a firearm and threatening behaviour in 2013. His remaining convictions are for theft, fraud and making false representations. The offences were committed before the Appellant came to the UK in November 2018. His last offence was for theft of a bottle of vodka in Germany in October 2017.

### **Submissions**

5. Ms Hirst submitted a statement of case upon which she relied. I asked Mr Lindsay to respond to the submissions therein before hearing from Ms Hirst. Mr Lindsay relied on the grounds and submitted the Appellant's antecedents were accepted and the lowest level of protection applied. The Appellant had a lengthy and serious criminal record including a serious sexual assault. The Appellant had only been in the UK a few days before deportation proceedings were commenced. He was then detained.

The Appellant had not demonstrated that he would not re-offend and, given the pattern and period of his previous offences, he currently posed a sufficiently serious threat. The judge erred in law in failing to appreciate the Appellant was a persistent offender and failed to consider the pattern and serious nature of his offending behaviour.

6. The Appellant was at medium risk of re-offending. The protective factors referred to by the judge had not prevented him from offending in the past. The judge failed to consider the serious harm to the public if the Appellant re-offends. Had he done so he would have concluded the Appellant was a genuine, present and sufficiently serious threat.
7. Mr Lindsay submitted the judge did not engage with paragraph 2 of Schedule 1. Further, the judge made no record of the Appellant's convictions for dishonesty offences and failed to demonstrate he had taken them into account in finding the Appellant was a credible witness.
8. Ms Hirst submitted there was no error of law in the judge's decision and the grounds amounted to disagreements with the judge's findings. The burden was on the Respondent to show that the Appellant was a sufficiently serious threat and the Respondent had failed to demonstrate that threshold had been met. The Appellant's previous convictions in themselves were not sufficient. The judge considered the evidence in the round and her conclusions were open to her on the evidence before her.
9. There was a very detailed clinical risk assessment by an independent psychologist, Mr Cordwell, which identified protective factors and the lack of offending since the Appellant came to the UK. The judge took into account Schedule 1 and was entitled to rely on the expert opinion that the Appellant's medium risk of offending was reduced by protective factors. The judge considered the Appellant's acknowledgment of the factors which put him at risk of reoffending and his expressed intention that he would not re-offend. The Appellant was prevented from working and was in serious financial difficulties, but he had not resorted to acquisitive offending, notwithstanding his numerous convictions for theft. The judge properly assessed the risk of re-offending at the date of hearing. The focus of the decision to deport was the commission of serious criminal offences and there was no point taken on the Appellant's credibility at the hearing. There was no error of law in the judge's decision to allow the appeal.

### **Conclusions and reasons**

10. It is apparent from paragraphs 14, 36 and 37 that the judge considered the Appellant's conviction for sexual assault and the serious consequences should the Appellant re-offend. The judge was entitled to rely on the opinion of Mr Cordwell, the Respondent having produced no evidence to contradict it, that the Appellant did not have any overt or entrenched attitudes or beliefs supportive of sexual activity with a child or non-consenting or aggressive sexual activity. It is a single offence of this nature which the Appellant committed over 12 years ago. The judge was entitled

to rely on Mr Cordwell's opinion that the Appellant was at low risk of violence or serious harm to others.

11. I am not persuaded the judge wrongly focussed her attention on this offence and failed to record the Appellant's convictions for dishonesty. The judge specifically referred to these convictions at paragraph 34 and to the Appellant's oral evidence relating to these convictions.
12. The evidence before the judge demonstrated that the Appellant had made a decision to come to the UK and remove himself from his criminal past. He had not offended since he arrived in the UK notwithstanding the financial hardship caused by his inability to obtain employment.
13. The judge's finding that the protective factors identified by Mr Cordwell reduced the Appellant's risk of re-offending was open to her on the evidence before her. It is apparent from paragraph 41, that the judge acknowledged the Appellant continued to offend after he began his relationship with his current partner. However, he has not offended since October 2017 and he had not offended since he joined her in the UK.
14. The judge considered Schedule 1 at paragraph 25 and she properly directed herself in law. There was no lack of reasoning or analysis of relevant factors. The principle in Bouchereau was not relied on but, in any event, it would not have materially affected the outcome of the appeal.
15. Reading the determination as a whole, I find that the judge's approach to the evidence was balanced, fair and objective. The judge considered the serious nature and pattern of the Appellant's offending behaviour and the risk of harm to the public. Accordingly, I find that there was no material error of law in the judge's decision and I dismiss the appeal.

**Notice of decision**

**Appeal dismissed**

**No anonymity direction made.**

*J Frances*

Signed  
Upper Tribunal Judge Frances



Date: 22 June 2020