



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

Appeal Numbers: UI-2022-004342
DA/00205/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 13th December 2022**

**Decision & Reasons Promulgated
On 9th March 2023**

Before

**THE HON MRS JUSTICE THORNTON
UPPER TRIBUNAL JUDGE RIMINGTON**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ERLANDAS VYTE
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr R Solomon instructed by Arora Lodhi Heath Solicitors

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The application for permission to appeal was made by the Secretary of State but nonetheless, hereinafter, we will refer to the parties as they were described before the First-tier Tribunal (“the FtT”).
2. The Secretary of State appealed against the decision of First-tier Tribunal Judge O’Keefe (“the judge”) which allowed the appellant’s appeal against deportation under Regulation 23(6)(b) of the Immigration (European Economic Area) Regulations 2016 (“the 2016 Regulations”).

3. The judge recorded that the Secretary of State's decision dated 9th June 2021 accepted that the appellant, a Lithuanian national born on 23rd July 1995, had acquired permanent residence under the 2016 Regulations and that the appellant had resided in the UK for at least 10 years prior to his conviction on 28th October 2019 at Snaresbrook Crown Court for robbery and the deportation order. He was sentenced on 7th February 2020 to 12 years and 6 months imprisonment. The appellant claimed he came here as a minor in May 2007, and it was accepted by the Secretary of State, as recorded in the decision, that prior to his imprisonment he had spent 11 years and 7 months in the UK. Consideration was given by the Secretary of State, to whether the appellant's deportation was justified on imperative grounds of public security and the principles set out under Regulation 27(5) of the 2016 Regulations in relation to proportionality.
4. The judge, at [4] - [7] described the offending as recorded in the Secretary of State's decision. The appellant had received a formal warning for criminal damage in 2007, a further warning in 2011 for two offences of false representations and in September 2018 was cautioned for possession of cannabis.
5. The index offences, committed between 5th June 2018 and 13th January 2019, with three accomplices, were 9 counts of robbery on 6 different dates with 7 different victims who were sex workers. The women were *'subjected to varying degrees of violence and threats. The women were often pushed, manhandled, threatened with knives, restrained with gaffer tape and tied up'*. The Secretary of State's decision recorded that the appellant's offender manager found that he posed a medium risk of harm to the public and the offences were linked to a very high risk of serious harm [8]. The appellant had shown he could act *'violently and with menace towards the vulnerable victims that he targeted'*. The appellant had not stated he attended any offence or rehabilitative related courses whilst in custody and there was insufficient evidence he had fully and permanently addressed all the reasons for his offending behaviour [8]. In the absence of evidence that there had been any improvement in his personal circumstances since his conviction, he was likely to reassociate with negative minded peers and revert to reoffending. Although his parents and siblings and partner of 7 years were in the UK, they had not prevented his offending [10] - [14].
6. The appellant's case was set out from [20] - [29]. His family were settled and working in the United Kingdom. Owing to Corona virus, he had not been allocated any courses in prison. He had gained 'enhanced' status in prison being part of the Prison Council and had been employed within prison since January 2021 in DHL. He had lived in the United Kingdom for over half his life and had undertaken education and attended skills' courses in the UK. He had converted to Islam whilst in prison.

7. The judge set out the relevant legal framework from [34] onwards including Regulation 27 of the 2016 Regulations and the considerations of Schedule 1, which addressed the fundamental interests of society.
8. In her findings of fact at [37] – [38] the judge noted that the *'decision may only be taken on imperative grounds'* and that *'It was accepted in this case that the appellant had acquired the highest level of protection'*. She set out that it was for the respondent to establish on balance that there were imperative grounds of public security to justify the decision to remove the appellant. The judge clearly identified the criminal convictions which were not disputed at [39] and also cited from the sentencing remarks where the appellant was identified as the *'prime mover'*, the *'ringleader'* and *'linchpin'* and that the offences involved a *'campaign of violence against escorts'* who were targeted because they had cash, telephones and may be less likely to complain to the police. The offences were organised and there was group activity, ransacking and theft of high value goods. None of the victims were cut although a knife was produced for threatening. The judge noted Paragraph 7 of Schedule 1 and recognised that members of the public were put at risk of grave harm, both physical and psychological.
9. The judge recorded that there was

'certainly public interest in removing an appellant who has committed such serious offences. The appellant has been sentenced to a very lengthy custodial sentence for 9 separate offences' [42].
10. The judge found at [44] that the appellant went to school here and had achieved GCSE and BTEC qualification and had worked in security, having dropped out of university. The judge also accepted that the appellant did not have close family ties in Lithuania.
11. To be clear, the judge did not at [47] find that the appellant was not socially and culturally integrated merely that his offending behaviour *'reduces the extent to which it can be said he is socially and culturally integrated in the UK'*. She noted he had been given a prison sentence at the age of 24 years.
12. From [49]-[59] the judge reviewed the appellant's OASys reports and the appellant's time in prison noting he had been employed, was regarded by one Officer as *'polite and helpful'* and another as *'an enhanced prisoner'*. The writer of the first report noted he had *'the capacity to avoid further offending in the future'* and that the appellant was very motivated to address his offending behaviour. The second OASys report indicated that that the appellant was at low risk of violent reoffending and low risk of non-violent reoffending with a low risk of serious recidivism. He was again seen as a medium risk to the public but said to be very motivated to address his offending behaviour but because of his low scoring he did not meet the requirements for

accredited programmes. He had completed a course on 'victim awareness' [58].

13. At [60] the judge referenced the decision of the Supreme court in Robinson v SSHD [2020] UKSC 53 where Lord Stephens acknowledged that the proposition recognised in the Court of appeal in relation to '*R v Bouchereau*' that '*past conduct alone which has caused public revulsion and is therefore a threat to the requirement of public policy may be sufficient to justify deportation without there necessarily being any clear propensity on behalf of the individual to act in the same way in the future*', had not been appealed to the Supreme Court. The judge specifically recorded that Singh LJ in the Court of Appeal had stated at paragraph 84

'in my earlier analysis of Bouchereau, that case itself recognised that what one is looking for is a present threat to the requirements of public policy; but it also recognized that, in an extreme case, that threat might be evidence by past conduct which has caused deep public revulsion'

14. At [62] the judge observed that

'whilst saying it was by the necessary nor helpful to attempt an exhaustive definition, Singh LJ paragraph 85 sort of case the court was thinking of was where, for example, a person had committed grave offences of sexual abuse or violence against young children'.

15. The judge also referred herself to SSHD v Straszewski [2015] EWCA Civ 1245 which emphasised at [17] '*the need to look to the future*'.

16. As the judge identified at [64] this was not a case where it had been suggested by the respondent that the appellant's past conduct alone was sufficient to justify his expulsion and there was no reference to Bouchereau in the decision letter or in submissions from the Secretary of State.

17. At [65] the judge directed herself as follows:

'I have to consider whether the appellant presents a genuine, present and sufficiently serious threat. The appellant has been assessed as a medium risk to the public and a low risk of reoffending in the community. He has been assessed as a low risk of violent reoffending. That of course doesn't [sic] mean that the appellant poses no risk, but this is a case where the respondent has to demonstrate that the appellant's removal is justified on imperative grounds of public security'.

18. The judge then proceeded at [66] to cite the decision of the CJEU in Tsakouridis (C-145/09) as to the interpretation of '*imperative grounds of public security*' and whether that meant '*only irrefutable threats to the external or internal security of the Member State could justify an*

expulsion' and noted that the Council of Justice of the European Union ("CJEU") said at [41]

'the concept of 'imperative grounds of public security' presupposes not only the existence of a threat to public security, but also that such a threat is of a particularly high degree of seriousness, as is reflected by the use of the words 'imperative reason'.

Grounds of permission to appeal.

19. The Secretary of State appealed the FtT decision allowing the appellant's appeal on the following grounds:
- (i) That the judge did not reach a definite conclusion on integration.
 - (ii) there were inadequate reasons given for finding that imperative grounds were not made out.

Analysis

20. We take each ground in turn. We have set out the key findings of the judge above and on which we rely.
21. In ground (i) the Secretary of State submitted that the judge did not go on to reach a definitive conclusion on the point of the appellant's integration. Given the judge expressed doubts about his level of integration, it was argued it was incumbent upon the judge to make a finding on the issue as this was relevant to the level of protection. At the hearing, Miss Cunha attempted to withdraw the concession on integration in the refusal letter.
22. At the hearing we pointed out to Ms Cunha that the Secretary of State in her refusal letter had accepted that the appellant was integrated. Although she attempted to cast her submissions in the light of 'withdrawing a concession', we consider that the acceptance in both the refusal letter and in the submissions before the FtT, as recorded by the judge, is definitive of the concession on fact of integration. There were no exceptional circumstances or even a warning to the appellant that this was viewed as a concession to be withdrawn and we do not grant permission. The Secretary of State, as the judge recorded, had clearly accepted the appellant, who had come here as a minor, had been educated here and had 10 years of residence in accordance with the 2016 Regulations counting back from the date of the exclusion order, was integrated. No point was taken on this at the hearing before the FtT and reading the decision the judge at [37] did not find he was not integrated (as noted above) and clearly directed herself on the appropriate level of protection that being 'imperative grounds'.
23. There is no merit in ground (i).

24. In ground (ii) the Secretary contended that the reasoning in relation to 'imperative grounds' was inadequate. There were two parts to the test; first the risk of re-offending and secondly the seriousness of any future offending. In this case the appellant was convicted of crimes where he was noted as an instigator by the sentencing judge and where vulnerable women were the targets. He was part of a gang. The offending showed a pattern of escalation and the risk that future offending would be more serious. It was submitted the judge failed to engage with the nature of the crime and the impact on society. Further it was unclear whether the future offending of the nature of that already committed would justify removal on imperative grounds. The judge appeared to reject the finding that the appellant could stay out of trouble for a long period of time and failed to make the findings to support the conclusion that the imperative grounds test was not met.
25. We find that although the grant of permission stated the judge limited her consideration to the probation risk categories and apparently failed to acknowledge the offender manager reference that the offending was linked to a very high risk of serious harm, it is clear that there were in fact two OASys reports and the judge did not confine herself to reliance on the probation reports alone for her assessment of threat.
26. We have cited extracts of the decision above to indicate the findings that the judge had made. There is no merit to the ground that the judge did not factor into her assessment the risk of reoffending and the seriousness of future offending. It should be remembered that the appellant was afforded the highest level of protection from expulsion namely imperative grounds. The judge cited Tsakouridis which expands upon the concept of imperative grounds and was aware that the definition could encompass not just a threat to public security but also a threat from offending that was a particularly high degree of seriousness.
27. When considering the definition of 'imperative' grounds at [47] Tsakouridis held
- 'since drug addiction represents a serious evil for the individual and is fraught with social and economic danger to mankind...trafficking in narcotics as part of an organized group could reach a level of intensity that might directly threaten the calm and physical security of the population as a whole or a large part of an organized group could reach a level of intensity that might directly threaten the calm and physical security of the population as a whole or a large part of it.'*
28. The judge identified the seriousness of the offending, describing it at some length as can be seen from extracts cited above. That the judge engaged with the nature and seriousness of offending is demonstrated by the judge setting out the crimes of robbery in detail and citing from the sentencing reports. It is inconceivable that she did not have this at the forefront of her mind when making her findings. She specifically cited

both OASys reports and the overall circumstances when considering the future risk.

29. In the November 2020 OASys report which assesses current and future risk, the appellant is recorded as posing a 'medium risk' of serious harm, as the judge describes rather than posing a 'high risk' of serious harm should he re-offend. The offence which was committed was linked to very high risk of serious harm.
30. The judge was aware that a low risk of harm as per the OASys report did not mean 'no risk'. At [58] the judge made a finding relying on the second OASys report (the appellant being assessed on 8th February 2021) which indicated that that the appellant was at low risk of violent reoffending and low risk of non-violent reoffending with a low risk of serious recidivism. A careful reading of the decision demonstrates that the judge clearly accepted that OASys report but also relied on the letters from the prison officers [52] and that any infractions occurred before the appellant was sentenced [49].
31. A disagreement with the weight to be afforded by a judge to the evidence, which is a matter for the judge should not blithely be characterized as an error of law. She did not rely solely on the OASys reports but clearly, they were instrumental and properly so in her assessment that the appellant did not pose a threat of a particularly high degree of seriousness. Contrary to the respondent's challenge the reasoning is not limited to considering the probation categories of risk and this can be seen from the findings we have noted above.
32. The reference at [67] that the '*appellant's offending is not so heinous that his removal is justified on past behaviour alone*' is poorly expressed; the crime was evidently reprehensible and despicable, but we think the judge in fact meant that the crime did not reach the threshold for fulfilling the Bouchereau exception and indeed, as the judge observed, that was not pleaded in the decision letter from the Secretary of State or a point made in submissions.
33. The judge recorded, that the crime of robbery was described as serious, involved the appellant being an instigator, and involved three accomplices and a series of offences targeting vulnerable women, but the judge clearly found, having directed herself properly legally, that the crime did not reach the threshold as set out in Tsakouridis, (being a danger to mankind), or threaten the population as a whole. That in itself, would affect any finding in relation to future risk of offending which, as seen above, the judge addressed.
34. At [49] Tsakouridis explains that only, if having regard to the exceptional seriousness of the threat such a measure is necessary for the interests it aims to secure, that expulsion can be justified on imperative grounds of public security. The judge adequately reasoned why she found that the Secretary of State had not shown that the appellant posed

such a risk. She stated at [67] that *'looking to the future the professional assessments indicate that the risk of the appellant offending in this way again are low although he remains a medium risk to the public'*. It is clear from this reasoning that the relevant factors had not reach the threshold for 'exceptional seriousness'. The judge added that the appellant has *'been assessed as motivated to address his offending behaviour'*. The judge's reasoning is overall adequately explained. Although the respondent had criticised the appellant's lack of 'rehabilitative programmes', we note the judge found his *'low scoring within the OASys assessment meant that he did not meet the requirements for accredited programmes'*.

35. The judge does not shy away from stating that there is a public interest in removing the appellant but on the evidence the relevant bar had not been reached. A careful reading of the decision shows that the judge found evidence that the appellant was motivated to address his offending behaviour and although he posed a medium risk to the public in the community his violence predictor risk of *reoffending* and non-violent risk was low. Having weighed the relevant evidence the judge found that the respondent had not shown imperative grounds. The judge in her conclusions clearly had in mind the findings we have referenced above. We conclude that the reasoning was concise and did not suffer from unnecessary repetition. That does not make the reasoning untargeted or inadequate.

36. We find no material error of law and the decision of the FtT will stand. Mr Vyte's appeal remains allowed.

Signed Helen Rimington Date 13th January 2023

Upper Tribunal Judge Rimington