



**Upper Tribunal
(Immigration and Asylum Chamber)**
UI-2022-003756

Appeal Number:

First Tier No:
EA/50585/2020;
IA/03212/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 4 September 2023**

**Decision & Reasons
Promulgated
On 9 November 2023**

Before

**UPPER TRIBUNAL JUDGE BLUNDELL
DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

**ARTURS DONIKS
(ANONYMITY ORDER NOT MADE)**

Appellant

Respondent

Appearances:

For the Appellant: Mr Rai, Counsel
For the Respondent: Mr Clarke, Presenting Officer

DECISION AND REASONS

1. The Secretary of State appeals with the permission of Upper Tribunal Judge Stephen Smith against the decision of First-tier Tribunal Manuell. In order to avoid confusion, however, we will refer to the parties as they were before the FtT: Mr Doniks as the Appellant and the Secretary of State as the Respondent.

Background

2. The Appellant, a national of Latvia, date of birth 21 June 1999, appealed against the Respondent's decision, dated 23 October 2020, to deport him from the United Kingdom pursuant to the Immigration (EEA) Regulations 2016, particularly Regulations 23 and 27, on the grounds of public policy and public security. That decision followed the appellant's involvement in various offences, the most serious of which concerned the supply of Class A drugs in 2019. Those offences resulted in a sentence of 37 months' imprisonment. The respondent considered that the Appellant represented a genuine, present and sufficiently serious threat to the fundamental interests of the UK and that his deportation was a proportionate step.

The Appeal to the First-tier Tribunal

3. The appellant's appeal was allowed by First-tier Tribunal Judge Manuell, who concluded that the Appellant had lived in the United Kingdom for more than ten years, in one EEA qualified capacity or another, and therefore was entitled to the highest ("imperative grounds") level of protection against removal. The judge noted that it was accepted by the Respondent that imperative grounds for his removal could not be shown and hence the Appellant's appeal would succeed if that were the Tribunal's finding: [38]. In the same paragraph, the judge nevertheless expressed his own conclusion that 'the Appellant's offence falls well short of meeting the high threshold applicable to 'imperative grounds'.
4. The judge went on, at [39]-[46], to consider the appeal on the alternative basis that the imperative grounds standard of protection did not apply to

the Appellant. He did so 'lest there be any divergence of view or dissent from its primary finding as to the effective length of residence'. As he explained, therefore, this consideration took place on the basis that the Appellant had acquired permanent residence and that the Respondent was required to show serious grounds of public policy (etc) if she was to remove him.

5. In undertaking the analysis at [39]-46], the judge took account of the OASys report and an updating email from the Appellant's Probation Officer; the Appellant's relationship with his partner, his sister and his father, and their likely influence upon him; the Appellant's integration to the United Kingdom including his command of English; his lack of connection to Latvia, which he left when he was eleven years old; the Appellant's strong bond and valuable involvement in the life of his son, who was born in March 2020 (after the Appellant's conviction); and the difficulty in the Appellant's partner and their son living in Latvia with him. Having taken all of those matters into account, the judge concluded, at [46], as follows:

Drawing these various strands together, the tribunal finds that the Respondent has not shown that that the Appellant represents a genuine, present and sufficiently serious threat to justify his removal from the United Kingdom on public policy and public security grounds, and that such removal would be proportionate. The tribunal finds that the Appellant's removal would be disproportionate. The Appellant's appeal is allowed.

The Appeal to the Upper Tribunal

6. In poorly delineated grounds of appeal to the Upper Tribunal, the Secretary of State submitted as follows. Firstly, that the judge had misdirected himself in law in calculating that the Appellant had acquired imperative grounds protection against deportation. Secondly, that the judge had erred in attaching weight to the assertion in the OASYS report that the Appellant's offending had no 'direct victims'. Thirdly, that the judge had

left material matters out of account in concluding that the Appellant did not represent a genuine, present and sufficiently serious threat to the fundamental interests of the UK. Fourthly, that the judge had also failed to take account of relevant matters in concluding that the Appellant's removal would be a disproportionate course.

7. In his submissions before us, Mr Clarke for the respondent submitted that the judge had clearly erred in concluding that the Appellant had acquired imperative grounds protection. More fundamentally, however, he submitted that the judge had erred in failing to take account of the entirety of the Appellant's offending, including his cautions, and had failed to take account of schedule 1 of the Immigration (EEA) Regulations 2016. He submitted that the findings as to risk and proportionality were both tainted as a result of these errors.
8. It was accepted by Mr Rai, in light of *FV (Italy) v SSHD* (C-424/16 and C-316/16); [2019] QB 126, the Appellant had not acquired the highest level of protection against expulsion and that the judge had erred in concluding otherwise. He submitted that this error was immaterial to the outcome of the appeal as a result of the judge's findings about the absence of a genuine, present and sufficiently serious threat and the proportionality of the appellant's removal.

Analysis

9. We accept Mr Rai's submission that the judge's error as to the Appellant's acquisition of imperative grounds protection was immaterial to the outcome of the appeal. We consider that the judge made a finding which was open to him as a matter of law when he concluded that the Appellant did not represent a genuine, present and sufficiently serious threat to the fundamental interests of the United Kingdom. That finding was determinative of the appeal (*Essa* [2015] UKUT 520 (IAC); [2016] Imm AR 114 refers) and nothing said in the Secretary of State's grounds of appeal,

as amplified in Mr Clarke's submissions, suffices to unseat that finding. Our reasons for reaching that conclusion are as follows.

10. The Respondent's grounds criticise the judge for quoting the OASys report's statement that there were no 'direct victims' of the Appellant's offending. She draws attention to what has been said by the Court of Justice about the societal danger of addictive narcotics and those who seek to benefit from that trade. The reproduction of the 'direct victims' part of the OASys report at [40] of the judge's decision does not show that the judge erred in law, however, given that the quotation continued to refer to the 'untold misery and harm' caused by drugs. We note also that the judge stated at the end of that paragraph that 'the seriousness of the Appellant's offence cannot be overlooked.' There is no reason to think that the judge took anything other than a serious view of the Appellant's offending, and he was clearly cognisant of the harm caused by drugs of Class A.
11. Mr Clarke made some reference in his submissions to the decision of the Court of Appeal (Sales LJ, as he then was, and Newey LJ) in *Kamki v SSHD* [2017] EWCA Civ 1715. The submission made in the grounds of appeal is that this authority established that "even where the risk of re-offending is low, the threat can be sufficiently serious if the consequences of re-offending are very serious." We are not sure that this represents an accurate statement of what was decided in *Kamki*. We see from [16] of Sales LJ's judgment that permission to appeal was granted because the appeal was thought by Moroe Bick LJ to raise an important point of principle, which was "whether for the purposes of the tests in regulation 21 for deportation of a foreign national with a permanent right of residence under the EEA Regulations it is legitimate to look both at the likelihood of re-offending occurring and at the seriousness of the consequences if it does." In the event, however, that point was conceded by leading counsel for the appellant. He was recorded at [18] as accepting that "it is legitimate to look both at the likelihood of re-offending occurring

and at the seriousness of the consequences if it does.” Sales LJ (with whom Newey LJ agreed) found that to be a ‘realistic concession’ and the appeal then proceeded as a ‘conventional appeal’, that is to say one in which no important point of principle was at stake.

12. It is clear from Sales LJ’s judgment that the facts in *Kamki* were stark. Having raped his best friend’s girlfriend when she was in a drunken stupor, and having denied the offence throughout, Mr Kamki was found by the Probation Service to represent a high risk of harm to vulnerable females if the appellant was released into the community. That assessment comprised two parts. Mr Kamki was thought to present a low probability of reoffending but that the harm which would occur if he did prey on a vulnerable female in a similar way would be very serious. Concern was clearly expressed in the OASys report about the risk presented by the appellant to young females who were vulnerable as a result of alcohol or drug misuse: [11] of the OASys refers, in particular.
13. No such concerns were expressed in this case. There is, as we have already explained, no reason to think that the judge lost sight of the serious harm which might occur if the Appellant returned to dealing in drugs of Class A. The judge did not consider, for reasons which were plainly cogent and rational, that there was a risk of the Appellant returning to that pernicious trade. In reaching that conclusion, he took account of matters which included the support available from his family and the changes since the Appellant’s offending took place, including the presence of his young son and the absence of any indication that he had used drugs after his conviction. It had been confirmed by his Probation Officer that the Appellant was no longer mixing with his former associates.
14. There is a similar air of unreality to the respondent’s submission at [5] of the grounds of appeal that the judge failed to take into account the amount of time which had passed since the Appellant had been released on licence. The judge’s decision shows that he was clearly aware of the chronology. He made reference to the Appellant being on licence at the

time of the hearing at [36]. In fairness to Mr Clarke, he made no reference to this point in the grounds.

15. The Respondent's grounds of appeal submit that the judge failed to weigh the Appellant's cautions in 2013 and 2017 into his assessment of risk and integration into the UK. He has cautions for destroying or damaging property and battery in 2013 and 2017 respectively. Again, there is no reason to think that the judge overlooked those cautions. He made reference to them at [2] of his decision and was evidently aware of the contents of the refusal letter and the materials from the Probation Service. There was not thought by the Probation Service to be a risk of those types of offences occurring again and such minor matters shed very little, if any, light on the Appellant's integration into the United Kingdom.
16. The respondent's best point in the grounds of appeal is perhaps that which appears at [7]. It was that point which persuaded UTJ Smith to grant permission. It is said in this paragraph of the grounds that the judge mentioned schedule 1 to the Immigration (EEA) Regulations but failed to apply it. Mr Clarke submitted that the judge had clearly erred in this respect but we do not consider that submission to be borne out when it is considered against the salient parts of schedule 1.
17. Neither paragraph 2 nor paragraph 4 are of any real application to this case. The appellant's partner is British, as his child. He came to the UK before he started secondary school. His integrating links to the UK have been formed over many years, before he started offending. Had the judge set out his reasons more fully, expressly taking these provisions into account, he would not conceivably have reached a different conclusion in relation to the Appellant's integration.
18. There is no reason to think that the judge overlooked the general statement of principle in paragraph 3 of schedule 1. The Appellant has received a single conviction in the UK. The judge was clearly aware that it

was for a serious offence. He weighed the nature of the offence against what he had been told (and accepted) about the Appellant's efforts to rehabilitate himself, and he reached a reasoned conclusion that he did not represent a genuine, present and sufficiently serious threat.

19. The respondent made particular reference in her grounds of appeal to paragraph 7 of schedule 1 but, again, her submissions in this respect suffer from a lack of reality. The judge was clearly cognisant of the harm caused to society by addiction to drugs and the illegal trade in narcotics but he concluded for good and proper reason that this young man was unlikely, given the presence of his young baby and the efforts he had made to change his life post-conviction, would not return to that trade.
20. In our judgment, therefore, the judge is likely to have borne in mind schedule 1 to the EEA Regulations in reaching his conclusions. He had made reference to that schedule in his decision but he did not need to refer to it expressly thereafter, given its limited impact on the assessment which followed. Had the judge made express reference to it, he would evidently have reached the same conclusions on the facts of this case.
21. There is some suggestion in [8] of the grounds that the judge erred in attaching weight to the Appellant's prospects of rehabilitation in Latvia, as compared to those prospects in the UK. But the judge did not 'assume that the appellant's prospects are materially different', as in *SSHD v Dumliauskas* [2015] EWCA Civ 145; [2015] Imm AR 773. He reached reasoned conclusions that the appellant's prospects of rehabilitation would be better in the UK, given the presence of his family and the fact that this is the country in which he was raised from the age of eleven. To do so was not to err in law by making an assumption; it was to reach a finding of fact on a matter which is accepted on all sides to be relevant to proportionality.
22. The remaining paragraphs in the grounds - [9], [10] and [11] - were not developed orally by Mr Clarke. He was correct not to do so; the complaints

in those paragraphs are submissions on the merits of the appeal and an invitation to interfere with findings of fact which were open to the experienced judge in the First-tier Tribunal. As UTJ Smith said when granting permission to appeal, they represent complaints of fact and weight.

23. For the reasons above, therefore, we find that the decision of the FtT did not involve the making of an error on a point of law and we dismiss the respondent's appeal.

DECISION

The appeal by the Secretary of State is dismissed.

ANONYMITY ORDER

No anonymity order was sought, and none is required.

A handwritten signature in black ink, appearing to read 'T. Davey', with a stylized initial 'T' and a flourish at the end.

Signed
Deputy Upper Tribunal Judge Davey

Date 8 November 2023