



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

Appeal Number: DA 00563 2013

THE IMMIGRATION ACTS

Heard at Field House

On 20 November 2013

Determination

Promulgated

On 16 December 2013

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

VLADAS JUOCYS

Respondent

Representation:

For the Appellant: Ms A Everett Senior Home Office Presenting Officer

For the Respondent: Mr A Bandegani, Counsel instructed by Kesar & Co, solicitors

DETERMINATION AND REASONS

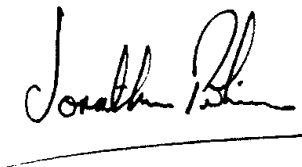
1. This is an appeal brought by the Secretary of State against a decision of the First-tier Tribunal to allow an appeal against a decision of the Secretary of State to deport the respondent following his conviction and sentence to five years' imprisonment for very serious tax offences.
2. The respondent is a citizen of Lithuania and therefore of an EEA state. It is trite law that EEA nationals who commit criminal offences in the United Kingdom are not in the same position as foreign nationals. The power to make a deportation order against them is regulated by the European Economic Area Regulations of 2006 which purposefully make it difficult to remove a person from the jurisdiction if they are in fact an EEA national.

3. The correct test was clearly identified by the First-tier Tribunal. It said at paragraph 35 of the determination that it was looking to see if there was sufficient evidence that the appellant currently presents a genuine, present and sufficiently serious threat to the public. It concluded that he did not and its main reason for reaching this conclusion is supported by the NOMS report which said that there was a low risk of reoffending.
4. The First-tier Tribunal invited criticism because, perhaps a little thoughtlessly, it adopted an observation of the sentencing judge, His Honour Judge Leonard QC, without explaining what it meant. When imposing the sentence of five years' imprisonment the learned judge in the Crown Court made it plain that he was not concerned by the appellant's previous convictions. The appellant has previous convictions and they are things of which he ought to be ashamed. He has been convicted of driving with excess alcohol and using a vehicle whilst uninsured, failing to surrender to custody and interfering with an insurance document with intent to deceive and again for driving with excess alcohol. When issues of public safety are considered excess alcohol offences can be a very considerable concern. However, if I may respectfully so comment, it was unlikely that these things made any difference to the punishment appropriate to the tax offences. The Tribunal however was concerned with the danger, if any, that the appellant's continuing presence presented to the public in the United Kingdom.
5. Any suggestion that the Tribunal ignored these convictions when it reached its decision is clearly wrong. Firstly, it referred to the convictions expressly in the determination and secondly, it makes it plain that it appreciated that the conclusion of the officer who prepared the NOMS report was made in the knowledge not only of the tax offence for which there was a five year term of imprisonment, but of the other offences as well. In other words, it is plain from the face of the determination that the Tribunal relied on a NOMS report which itself made an evaluation of the appellant's likelihood to reoffend having regard to all of his previous convictions. The Tribunal did not mean that the other convictions could not be relevant to its

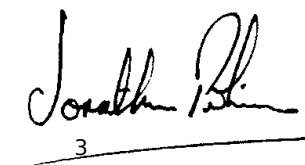
decision but that they were not relevant because the respondent had put them behind him.

6. For my part I can see nothing that approaches irrationality in this conclusion, still less anything that looks like a material misdirection. As far as I can see, when the determination is read carefully there is nothing whatsoever wrong with the reasoning or the conclusion.
7. It follows that in the circumstances I dismiss the Secretary of State's appeal and the decision of the First-tier Tribunal shall stand.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Dated 6 December 2013

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line with the number '3' centered below it.