Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01961/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 13 May 2014	**On 22nd may 2014**
Prepared 13 May 2014	

Before

LORD BANNATYNE SITTING AS JUDGE OF THE UPPER TRIBUNAL
UPPER TRIBUNAL JUDGE MCGEACHY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ZYDRUNAS JURASAUSKAS

Respondent

Representation:

For the Appellant: Mr C Avery, Senior Home Office Presenting Officer
For the Respondent: Mr R Claire, of Counsel instructed by Messrs J M Wilson

DETERMINATION AND REASONS

1. The Secretary of State appeals, with permission, against a decision of the First-tier Tribunal (Judge of the First-tier Tribunal Pooler and Sir Jeffery James KBE CMG (lay member)) who in a determination promulgated on 10 December 2013 allowed the appeal of Mr Zydrunas Jurasauskas against a

decision of the Secretary of State made on 16 September 2013 to make a deportation order against him pursuant to the Immigration (EEA) Regulations 2006.

2. Although the Secretary of State is the appellant before us we will, for ease of reference, refer to her as the respondent as she was the respondent in the First-tier Tribunal. Similarly, we will refer to Mr Zydrunas Jurasauskas as the appellant as he was the appellant in the First-tier Tribunal.

3. The appellant is a citizen of Lithuania born on 10 December 1987. He arrived in Britain in June 2006 joining his mother who was working here. He started working in July 2006 at the poultry factory where his mother was working – his employment being through Prime Time Recruitment at Tulip Ltd in Tipton. There was in 2007 a gap in his employment before in July 2008 he started working for Spice Hawk Steel Sections.

4. On 14 February 2013 he was convicted on pleas of guilty of two counts of possession of class A drugs (heroin and crack cocaine) with intent to supply and was sentenced to twenty months' imprisonment on each count.

5. Thereafter the decision to deport was made.

6. In their determination the Tribunal set out the relevant parts of the Immigration (EEA) Regulations 2006 namely Regulations 15, 19 and 21. They noted the evidence before them and set out at length the sentencing remarks of the judge.

7. They found that the appellant was a qualified person under the Regulations from his arrival in June 2006 until April 2007 and from July 2008 onwards. Taking those dates and noting that the period beginning on 21 February 2013 when he was first detained could not be relied on, they found that the appellant was not entitled to the higher level of protection afforded by Regulation 21(3) to a person with a permanent right of residence.

8. They then turned to the factors that are set out in Regulation 21(5) and (6).

9. Although there was no OASys Report before them they noted the National Offender Management System Report which referred to an OASys Report, completed on 18 February 2013, which had assessed the appellant as presenting a low likelihood of reconviction and a low level risk of serious harm.

10. The Tribunal considered the Presenting Officer's submission that as the appellant had had a drug problem prior to his arrest and had been unable to address it and that therefore, although he was undertaking a detoxification programme in prison where he would have an incentive to

follow the course, it should be assumed that he would resume contact with the people with whom he had been previously associated and, in effect, that therefore the appellant would be unable to remain drugs free. The Tribunal stated that those submissions were not accepted. They placed weight on the offender manager report stating that:-

> "In our judgment, considerable weight must be placed on the professional opinion of an offender manager with training and expertise in the assessment of the risk reoffending. We regard the appellant's completion of the detoxification programme as significant, particularly in the light of the appellant's evidence that it had been difficult for him. We found the appellant's evidence that he intended not to take drugs on release from prison to be persuasive. It is consistent with oral evidence from his sister who told the Tribunal that the appellant's attitude and behaviour had changed since his imprisonment and that he was now remorseful."

11. The Tribunal then went on to note other relevant factors which included the fact that the appellant had the support of his mother with whom he had lived before his conviction and with whom he would be able to live on release and who had secure accommodation and that he had employment to which he could return, the company having confirmed by letter that his employment remained open to him. They pointed out that the appellant had demonstrated a good employment record for more than four years prior to his conviction and had demonstrated his wish to return to work.

12. At paragraph 24 they wrote:-

> "We must also take into account the support to which the appellant will be entitled and the supervision which he will be required to accept under the terms of his licence for a period of ten months if he is released on the earliest possible date. We consider that this and the other factors mentioned above are relevant to the question of rehabilitation. In this respect the Tribunal has to consider the interests of the European Union in general: see *R (Essa) v Upper Tribunal and another [2012] EWCA Civ 1718*. If the appellant were deported to Lithuania he would not, we find, be homeless because he has extended family including grandparents with whom he has previously stayed but he would not benefit from the assistance of an offender manager nor would he be as likely to obtain employment. Although no direct evidence on this point was adduced, the specific example of family migration displayed by the appellant's mother and later the appellant and his sister is indicative of the relative ease of obtaining employment in the UK in comparison with Lithuania. The appellant gave evidence through an interpreter as was his entitlement but he demonstrated a good understanding of English, spontaneously answering some questions in English. His good work record and his ability to communicate in English are also favourable factors which point to a finding that the prospects of rehabilitation are greater in the UK than in Lithuania."

13. They concluded in paragraph 26 by stating:-

> "Drawing these threads together, we conclude that the appellant's conduct does not represent a genuine, present and sufficiently serious threat

affecting one of the fundamental interests of society. Taking account of the NOMS risk assessment, which we accept, the level of the appellant's integration in the UK and his prospects of rehabilitation we conclude that the decision does not comply with the principle of proportionality. For these reasons the appeal on EEA grounds must succeed and it is not necessary for us to consider Article 8 of the European Convention."

14. The Secretary of State appealed. The grounds of appeal first argued that the Tribunal had misdirected themselves in consideration of the issue of rehabilitation, stating that the appellant would have the support of extended family members in Lithuania and arguing that he had not shown that there were no rehabilitative options available to him there and therefore the findings of paragraph 24 were not adequately reasoned. Secondly the grounds stated that the Tribunal should have considered the relevance of rehabilitation in relation to the appellant's level of integration with society in Britain. They submitted that the relevant test was whether or not the appellant was "genuinely integrated" into society in Britain and argued that it was relevant that the appellant had only been considered to be afforded the lowest level of protection in relation to deportation. Moreover, he would retain his association with Lithuania by virtue of his usage of the language and through family ties.

15. They argued that his integration was hampered by his criminality which indicated that he had failed to integrate with the societal values of the host country. They referred to the opinion of Advocate General Bot in **Onuekwere v SSHD** case C-378/12 and stated that the appellant had failed to establish a genuine level of integration.

16. At the hearing of the appeal before us Mr Avery having emphasised the seriousness of the appellant's crime and the sentence he had received argued that in the determination the Tribunal had erred in their conclusion that the appellant was unlikely to take drugs on release from prison and in their conclusion that the appellant's conduct did not represent a genuine, present and sufficiently serious threat affecting one of the fundamental interest of society.

17. He stated that a key factor was that the appellant had not obtained permanent residence and that criminality was a factor which militated against a conclusion that an appellant was integrated. He quite properly pointed out that the advocate general's opinion in **Onuekwere** had been superseded by the judgment, which he placed before us, arguing that it showed that a prison sentence undermined the level of integration of an appellant and that this was a factor to be taken into account.

18. He accepted that the finding that there was a low risk of the appellant reoffending was not challenged.

19. Mr Claire first attempted to argue that the appellant should have been entitled to permanent residence here and therefore a higher level of protection. We pointed out that that had not been raised in any challenge

on behalf of the appellant against the determination nor in any Rule 24 statement and that we were therefore not prepared to accept that challenge. Mr Claire then went on to ask us to take into account a letter from the appellant's offender manager dated 6 May 2014 which indicated that he had made good progress and had been fully compliant with the requirements of his licence since release from prison on 20 December, that he was in full employment and had a strong work ethic. Of course that document was not before the Tribunal and we stated that we would not take it into account.

20. Mr Claire asked us to find that the decision of the Tribunal was correct and they had properly dealt with the issues of rehabilitation and correctly found that the appellant did not represent a genuine, present and sufficiently threat affecting one of the fundamental interests of society nor indeed that the decision complied with the principle of proportionality.

Discussion and conclusions

21. We have concluded that there is no material error of law in the determination.

22. We consider that the Tribunal properly considered all relevant factors and reached conclusions that were fully open to them. They considered the NOMS Report regarding the risk of reoffending and relied thereon. Their conclusions that the appellant's completion of the detoxification programme was significant and their acceptance of the appellant's assertions that he would not to take drugs on release was fully open to them. They properly took into account the appellant's family circumstances here, the fact that his job was open to him and that he had a good employment record.

23. With regard to the issue of rehabilitation they properly took into account the relevant judgment of the Court of Appeal in **Essa [2012] EWCA Civ 1718** and were entitled to conclude that the appellant was properly integrated into this country. Their conclusion that the prospects of rehabilitation were greater in Britain than Lithuania was again open to them.

24. The judgement in **Onuekwere** which was relied on in the grounds of appeal really deals with a different matter which is that of whether or not a period of imprisonment in the host member state of a third country national should be taken into consideration for the purposes of the acquisition of the right of permanent residence and of whether or not continuity of residence is interrupted by periods of imprisonment. It is not a judgment which relates to the issue of rehabilitation and, indeed, the Tribunal in making their finding that the appellant did not have permanent residence in Britain were making a decision which reflected the conclusions of the court in **Onuekwere**.

25. The reality is that the Tribunal properly assessed the evidence and concluded that there were a number of factors which showed that the appellant, notwithstanding the crime for which he had been imprisoned was integrated into Britain – his mother and sister lived here, he has a stable home here and a good work record with an employer who wished to employ him on release. They were also correct to place weight on the fact that the appellant was supported by an offender manager here and that he had given up the addiction to drugs which had been a strong factor in his crime. They were entitled to find that the removal of the appellant would not be proportionate.

26. We consider that the conclusions of the Tribunal correctly reflected the relevant law and were based on findings of fact which were well reasoned.

27. We therefore find that the determination of the Tribunal allowing this appeal against the decision of the Secretary of State to deport the appellant shall stand. The appeal of the Secretary of State is therefore dismissed.

Signed Date

Upper Tribunal Judge McGeachy