



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/03003/2015

THE IMMIGRATION ACTS

Heard at Field House
On 18 February 2016

Decision & Reasons Promulgated
On 13 July 2016

Before

THE HONOURABLE MR JUSTICE COLLINS
DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

MR VIDMANTAS MASALSKAS
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Muzira, Solicitor, Soloman Solicitors

For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision made by Judge Andonian to dismiss the appellant's appeal against a decision of the Secretary of State that he should be removed following his conviction in 2014 of two serious offences, one of possession of class A drugs with intent to supply and the other of possession of a significant sum of counterfeit money, some £900 or so. This offence was committed on 13 November 2013 when the appellant was in a car which was stopped by the police and the relevant drugs were found there.

2. He was at that time, and it is important to note at that time, a drug user and it may well be that some of the drug, cocaine, were for his own use but it clearly went beyond that and the circumstances of the offending are recorded in the remarks of the judge who sentenced him. As far as the drugs were concerned, what was said was that he was a user of drugs and there were traces of cocaine on some scales that were found in his house which he said were to measure for his own consumption but apparently his case was, and it does not seem that the judge rejected this, that he owed a substantial sum of money to a man and he had sold a car on that man's behalf and received the money in what turned out to be counterfeit notes and thus he still owed that money and he had the drugs because that man had required him to deliver them to another man and it was on that basis, as we say, that the sentence was passed. It amounted to two years and four months for possession of the cocaine with intent to supply and four months consecutive for the possession of the counterfeit currency.
3. The appellant is a national of Lithuania. There was a considerable question over the immigration history which he had put forward. He said that he had come to this country in the late 1990s. The precise date has been difficult to ascertain but it seems that it was early 1997, he having been here for a short period, he said, in 1996. In any event he had apparently voluntarily left this country and when he had entered in the late 1990s he did claim asylum but that lapsed when he left the country. It is not clear entirely when he re-entered but he produced evidence to the judge and to the Secretary of State in the form of revenue documentation which showed that he had been in this country save for the financial year 2008/2009 because there were no documents for that particular year. In those circumstances neither the Secretary of State nor the judge were satisfied that he had been here for a continuous period of five years because there had been a break on the evidence that he was able to provide.
4. It seems to us that on the material that was before him the judge was entitled to take the view that that continuous period of five years had not been established and as we understand it, Ms Muzira, who has appeared on behalf of the appellant, has not felt able to dispute that. She does say, however, that there was an error by the accountant and were this case to go back for reconsideration there would be evidence which filled that gap. However, in our view it is not a matter that is vital in considering the appropriate course to adopt for this appeal.
5. As the appellant is an EEA national and was exercising treaty rights in this country his deportation on grounds of public policy, which is what is relied on here, has to show that there are substantial reasons for deciding that he should not remain here and the basis is set out in paragraph 21 of the Immigration (EEA) Regulations 2006. Paragraph 21(5) provides so far as material:

“Where a relevant decision is taken on grounds of public policy or public security it shall, in addition to complying with the preceding paragraphs of this Regulation, be taken in accordance with the following principles -

 - (a) the decision must comply with the principle of proportionality;

- (b) the decision must be based exclusively on the personal conduct of the person concerned;
- (c) the personal conduct of the person concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society;
- ...
- (e) a person's previous criminal convictions do not in themselves justify the decision."

6. In order to justify deportation it is important to note that there must be a genuine and present sufficiently serious threat affecting one of the fundamental interests of society. Now we recognise of course that if there were an indication that this appellant was likely to reoffend or there was a strong risk of his reoffending that would suffice and no doubt if there were other conduct by him which justified that concern such conduct could exist if there was material which justified a conclusion that he was still likely to be a drug addict and thus involved in the drug world, if we may put it that way, and thus there was a risk that he might involve himself in supplying drugs to others. Thus it is of great importance that consideration be given in a case such as this to what evidence there is as to his future risk and importantly what steps if any he has taken in order to deal with his drug addiction and to avoid the possibility of further offending.
7. Before the judge evidence was produced which showed quite clearly from prison records and upon the view taken by those who were responsible first that he had taken steps to deal with his addiction. He had been working with a substance misuse team since May of 2014 at Maidstone Prison, had attended regular sessions, had completed what is called the Stepping Stones Drug Programme in October 2014 and was equally continuing to attend that. So he was clearly making an effort to deal with his drug problem which is what had led to his offending because there is no suggestion that, apart from that he had behaved when he was in this country, certainly from 2008 onwards, in a damaging way.
8. Furthermore the assessment of the likelihood of offending on his release was that the risk was small. Accordingly in our judgment there was not only no evidence to justify the contention that there was a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society but indeed the evidence was to the contrary.
9. It is significant when one looks at the decision of Judge Andonian that he asserts in the course of his judgment that the only reason why the appellant had not taken drugs in prison was because they were not available. That was a statement which not only had no evidence to support it but was totally contrary to the evidence that there was before him. Furthermore he said in his judgment that the appellant had taken no steps to address his drug habit whilst in prison, again, totally contrary to the evidence.
10. Furthermore, and this was the main basis upon which leave to appeal was granted, Judge Andonian nowhere considered the question of rehabilitation because of course the appellant on his release would have been required for the period which

otherwise would constitute the totality of his sentence to be under the supervision of the Probation Service to a degree and rehabilitation clearly can be an important consideration. It was not given any consideration by the judge and the decision of this Tribunal in Essa is a decision which has been approved in principle by the Court of Appeal.

11. There can be no doubt that the decision of the judge is one which cannot stand. We have had to consider therefore whether we should send this back for reconsideration or whether we should reach a decision ourselves. For the reasons we have set out we are satisfied that this is a case in which deportation in accordance with the 2006 Regulations cannot be justified. In those circumstances this appeal is allowed and the decision of the Secretary of State is quashed.

Notice of Decision

The appeal is allowed

No anonymity direction is made.



Signed

Date: 2nd March 2016

The Hon. Mr Justice Collins sitting as a Judge of the Upper Tribunal

TO THE RESPONDENT
FEE AWARD

No request was made.



Signed

Date: 2nd March 2016

The Hon. Mr Justice Collins sitting as a Judge of the Upper Tribunal