



**Upper Tribunal  
(Immigration and Asylum Chamber)  
OA/00733/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 11 December 2015**

**Decision & Reasons  
Promulgated  
On 18 January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR JUVENCIJUS MASILIUNAS  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms Everett, Home Office Presenting Officer  
For the Respondent: No appearance

**DECISION AND REASONS**

**Background**

1. This is an appeal against the decision of First-tier Tribunal Judge Gurung-Thapa promulgated on 8 July 2015. The First-tier Tribunal Judge allowed Mr Masiliunas's appeal against a decision of the Secretary of State for the Home Department refusing to readmit him to the United Kingdom under the European Community law on the basis that the Secretary of State was satisfied that grounds of public policy justified such a decision.
2. Although before me the Secretary of State is the Appellant and Mr Masiliunas is the Respondent, for the sake of consistency with the decision

of the First-tier Tribunal I shall hereafter refer to Mr Masiliunas as the Appellant and the Secretary of State as the Respondent.

3. The background to the case is set out with commendable clarity in the decision of the First-tier Tribunal. Further to that I note in particular the following matters:

(i) The Respondent's decision is dated 19 December 2014 and is in the following terms:

*"You have sought admission to the United Kingdom under EC law in accordance with Regulation 11 of the Immigration (European Economic Area) Regulations 2006 on the ground that you are a Lithuanian national. However I am satisfied that your exclusion is justified on serious grounds of public policy.*

*Specifically, you have been convicted of a firearms offence for which you have been sentenced to 8 years in prison in Lithuania. It is for this reason that the Secretary of State has initiated deportation proceedings against you.*

*Furthermore, it has come to the Home Office's attention that whilst in the United Kingdom between April 2013 and August 2014 you have been convicted 4 times for 9 offences ranging from domestic violence and assaulting police to going equipped for theft, damaging property and driving a vehicle under the influence of alcohol whilst uninsured. Therefore your exclusion on the grounds of public policy is further justified due to your propensity to reoffend.*

*I therefore refuse you admission to enter the United Kingdom in accordance with Regulation 19."*

(ii) In his Notice of Appeal the Appellant stated his grounds very briefly in the following terms:

*"My wife and daughter live in Scotland. Under laws of the EU my conviction has expired. I have a job in London."*

(iii) Despite the issuing of directions by the Tribunal neither party filed documents in the appeal beyond the Notice of Immigration Decision and the Notice of Appeal, to which I have already referred. The First-tier Tribunal Judge identifies this circumstance at paragraphs 7 and 8 of the decision. (The matter is not helped by the fact that neither party has filed any further documents in the context of the Upper Tribunal hearing - either to clarify matters in respect of the First-tier Tribunal hearing or by way of evidential material in the event that the appeal requires to be remade as is the requirement in accordance with standard directions that were issued to the parties in this appeal in the usual way.)

4. The First-tier Tribunal Judge essentially considered that the Respondent had not made out her case under Regulation 19 and Regulation 21, and in large part did so because of the failure to file any evidence. In all of the

circumstances, for the reasons set out in her decision, the Judge concluded that the Appellant's exclusion and subsequent removal was in breach of the EEA Regulations and allowed the appeal.

## **Challenge**

5. The Secretary of State broadly has raised three bases of challenge in the grounds in support of the application for permission to appeal. Ms Everett seeks to emphasise the second of those grounds which I will come to shortly. In my judgment she does well not to seek to emphasise either the first or third ground.
6. The first ground is based on an allegation that the Judge failed to record the existence of a conviction for robbery. It is said in this context in the Respondent's grounds that when the Appellant was sentenced in Lithuania in 1998 he was sentenced for possessing prohibited weapons (firearms) and robbery. It is to be noted that neither the date of the conviction nor the fact that there was an element of robbery involved was mentioned in the Notice of Immigration Decision, and because of the failure to file any further materials in the appeal there was no reference to robbery before the First-tier Tribunal Judge at all. Necessarily the Judge cannot be criticised for not having mentioned it.
7. The Respondent's third ground of appeal relates to the circumstance that the appeal proceeded 'on the papers' without a hearing. The Judge clearly was aware that she was dealing with a case 'on the papers'. It is suggested in the grounds that given the gravity of the issues involved in this case, and the strong public interest, the Judge should have turned her mind to directing that there be an oral hearing in the appeal. I fail to see how that could have been in any way material to the outcome of this case in circumstances where the Secretary of State had not filed any evidence in any event, and the Appellant was not present in the United Kingdom to give oral evidence in support of his appeal.
8. The ground upon which Ms Everett does place reliance is essentially that the First-tier Tribunal Judge failed to recognise that there was in effect a hierarchy of public interest considerations in play in the context of the exclusion provisions under the EEA Regulations. In this regard in particular the provisions of Regulations 19(1) and 21(3) are to be contrasted. Under 19(1) "*a person is not entitled to be admitted to the United Kingdom by virtue of Regulation 11 if his exclusion is justified on grounds of public policy, public security or public health in accordance with Regulation 21.*" Under Regulation 21(3) "*a relevant decision may not be taken in respect of a person with a permanent right of residence under Regulation 15 except on serious grounds of public policy or public security.*" The difference is that "*serious*" grounds are required in respect of a person with a permanent right of residence whereas only "*grounds*"

are required sufficient to justify the decision in respect of a person who does not have a permanent right of residence.

9. There was no express evidence before the First-tier Tribunal Judge as to the Appellant's status prior to the decision to refuse admission. The best that could be gleaned from the available information by way of the Notice of Immigration Decision was that the Appellant had been in the United Kingdom between April 2013 and August 2014. As it happens Ms Everett is able to tell me that he came to the attention of the authorities in April 2013 - that is not a date of entry to the UK. Be that as it may, there is no overt indication on the face of the Respondent's decision that the Appellant was a person with permanent residence, nor does the Appellant make any such assertion or provide any supporting documentation in this regard either in his grounds of appeal or otherwise.
10. However, the First-tier Tribunal Judge alighted on the words in the Notice of Immigration Decision in the first paragraph quoted above - "*your exclusion is justified on serious grounds of public policy*".
11. At paragraph 10 of her decision the Judge observes that "*this therefore implies that the Appellant has a permanent right of residence*". In my judgment that was an unsafe inference, and it has had the effect that the First-tier Tribunal Judge looked at the question of whether or not the Appellant's conduct justified exclusion on an erroneous basis: the available facts indicate that the Appellant had not acquired permanent residence, and accordingly the 'serious grounds' test was the wrong test. I am satisfied that that circumstance is sufficient to amount to an error of law which justifies setting aside the decision of the First-tier Tribunal.

### **Remaking the decision**

12. In looking to remake the decision of the First-tier Tribunal I observe again that I am not greatly assisted by the effective failure of both parties to participate fully in these proceedings by filing any documents or relevant information. I am prepared nonetheless to accept that the Appellant was convicted of firearms offences in Lithuania for which he received a sentence of eight years. I accept this fact on the basis that it is asserted in the Notice of Immigration Decision and that assertion is in itself some form of evidence as it is reasonable to infer that a competent decision-maker would not have made such an assertion without some material before them to support it. Moreover the Appellant has not in any way sought to question that asserted fact in his Notice of Appeal or otherwise.
13. I am similarly prepared to take into account the assertion made in the Notice of Immigration decision as to the Appellant's offending behaviour in

the United Kingdom - which is again not contested in the Notice of Appeal or otherwise.

14. In those circumstances it does on the face of it appear that the Appellant is an individual with a serious criminal record and a significant number of offences over a relatively short period of time, which is at the very least indicative of a propensity to reoffend which might readily excite the public policy concerns identified in Regulation 19(1).
15. However, what I am concerned about in this case is that there does not on the face of it appear to have been any consideration given to the provisions of Regulation 21(6) which is in the following terms:

*“Before taking a relevant decision on the grounds of public policy or public security in relation to a person who is resident in the United Kingdom the decision maker must take account of considerations such as the age, state of health, family and economic situation of the person, the person’s length of residence in the United Kingdom, the person’s social and cultural integration into the United Kingdom and the extent of the person’s links with his country of origin.”*

16. It is of course entirely possible that the Secretary of State’s decision maker did have regard to such matters, but if that is the case the consideration of such matters did not find its way into the Notice of Immigration Decision and accordingly I find that the Respondent’s decision on its face does not comply with the requirements of the Regulations and is not in accordance with the law. On that basis I allow this appeal as being not in accordance with the law to the limited extent that the effect is that the matter now needs to be reconsidered in accordance with the law by the Secretary of State.

### **Notice of Decision**

17. The decision of the First-tier Tribunal contained a material error of law and is set aside.
18. I remake the decision in the appeal. The Respondent’s decision was not in accordance with the law and the appeal is allowed to the extent that matters remain outstanding before the Respondent who must now make a decision in accordance with the law.
19. No anonymity direction is sought or made.

*The above represents a corrected transcript of an ex tempore decision given at the conclusion of the hearing.*

Signed

Date: 15 January 2016

**Deputy Upper Tribunal Judge I A Lewis**

**TO THE RESPONDENT**  
**FEE AWARD**

I have allowed the appeal and because a fee has been paid I have considered making a fee award. I have decided to make no fee award. The appeal has been only been allowed to a limited extent and on procedural grounds; the Appellant has not actively participated in proceedings or provided any evidence in pursuit of his challenge that his exclusion from the UK is justified on public policy grounds, and has thereby not assisted in any way in promoting full disposal of the appeal.

Signed

Date: 15 January 2016

**Deputy Upper Tribunal Judge I A Lewis**