



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: DA/00125/2018**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 30<sup>th</sup> October 2018**

**Decision Promulgated  
On 8<sup>th</sup> November 2018**

**Before**

**UPPER TRIBUNAL JUDGE FINCH  
UPPER TRIBUNAL JUDGE PLIMMER**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**ARJAN [F]**

Respondent

**Representation:**

For the appellant: Ms Dirie, Counsel

For the respondent: Mr Bramble, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant ('the SSHD') has appealed against a decision of the First-tier Tribunal ('FTT') dated 19 April 2018, in which it allowed the respondent's appeal against the SSHD's decision dated 19 January 2018 to deport him pursuant to the Immigration (European Economic Area) Regulations 2016 ('the 2016 Regs').

## **Background**

2. The respondent is a citizen of Albania. He entered the UK in 2002 and remained unlawfully until he was granted a residence card on 7 September 2016, on the basis of his relationship with his unmarried partner, a citizen of Lithuania (and therefore an EEA citizen). They have a child, born in 2015.
3. On 24 August 2017 the respondent was sentenced to 18 months imprisonment for actual bodily harm against his partner.
4. In light of this offence, the respondent was served with notice of deportation on 19 January 2018.

## **FTT proceedings**

5. The FTT heard evidence from the respondent, his partner and brother but concluded that the SSHD had not displaced the burden upon him to demonstrate that the respondent's removal is justified on grounds of public policy / security, pursuant to regulation 23 of the 2016 Regs.

## **Appeal to the UT**

6. The SSHD appealed to the Upper Tribunal ('UT') in lengthy grounds which overly focus on articulating disagreement with the FTT's decision. When read as a whole, the grounds do however submit that the FTT failed to take into account relevant evidence when making its findings on the seriousness of the index offence and the risks posed by the respondent.
7. Permission to appeal was initially refused by the FTT, before being granted by the UT.
8. At the hearing Mr Bramble relied upon the grounds of appeal. He argued that the FTT applied the elevated threshold of "serious grounds" when the respondent did not have permanent residence. He also relied upon the second ground of appeal to the effect that the FTT failed to take relevant evidence into account.
9. We asked Ms Dirie to clarify aspects of the chronology, which were unclear to us. She explained that the respondent completed his custodial sentence on 2 January 2018 but remained detained under immigration powers until he was granted bail later on in January 2018. The respondent was detained again with a view to removal shortly after this and not released until after the FTT hearing, on 12 May 2018. Ms Dirie therefore acknowledged that as at the date of the FTT decision, the respondent remained in detention.
10. Ms Dirie invited us to find that the FTT took into account all the relevant evidence, even if this was not expressly referred to, and invited us to dismiss the appeal.

11. After hearing from both representatives, we reserved our decision.

### **Error of law discussion**

12. The FTT properly directed itself that the burden of proof was upon the SSHD to demonstrate that the respondent represented a genuine, present and sufficiently serious threat justifying his deportation on public policy / security grounds. The FTT also properly directed itself to SSHD v Robinson [2018] EWCA Civ 85, which provides guidance on the relevant factors to be taken into account when determining this issue.

### *Risk assessment*

13. The FTT's findings on risk are inconsistent and mischaracterise the evidence available. At [30] the FTT observes an absence of police intelligence to suggest the respondent is at risk of committing other further offences but fails to resolve this with the conditions for his licence period expiring on 3 October 2018 expressly prohibiting approach or communication with his partner and child either directly or indirectly, without prior approval. Although the FTT refers to the licence conditions at [31], this is done in the context of the partner having taken steps and obtained approval to have contact with him whilst he remains in detention. The partner's own willingness to have contact with the respondent (who has been so violent toward her as recently as 2017 that he was sentenced to a lengthy period of imprisonment) of course does not in itself mean that that his risk has been lowered.

14. The FTT appears to find at [33] that the respondent is no longer considered by the probation service to be a danger to his partner and child. This is based upon a misunderstanding of the email from the probation service dated 29 March 2018 referred to at [32]. The probation service agreed to permit visits in the detention centre and if the respondent is bailed within the community "*on a stepped up basis*" in order for him "*to provide the necessary reassurances that he is no longer a risk to his partner*". Probation service has not assessed the respondent not to be a danger to his partner. Far from it. They have assessed that contact can safely take place within the confines of detention for obvious reasons. As to the community, there was no assessment that the respondent is no longer a danger or can return to live with his partner and child, but rather that he will need to be assessed step by step before probation can be reassured he is no longer a risk.

### *Seriousness of offence*

15. The FTT has referred in some detail to the judge's sentencing comments but has focused upon the aspects that show the respondent in a more benevolent light without considering the

sentencing comments as a whole or placing the more positive aspects in context.

16. First, the FTT drew attention to the basis of the plea accepted by the sentencing judge as being limited to the respondent pushing his partner down the last few stairs (and not involving any punching, kicking or slamming her head in the manner alleged) at [19] and [34] but has omitted to take into account important considerations relevant to the plea, as identified by the sentencing judge: the respondent only pleaded guilty on the day of trial (to a lesser charge) and maintained from the date of offence in April 2017 to June 2017 at least, that his partner was drunk and he found her at the bottom of the stairs in that state; the prosecution did not accept the basis of the plea but were not in a position to challenge it as the partner did not attend the trial even though she was the subject of a witness summons; the basis of the plea accepted in any event is a “*serious one*” involving an act that was “*extremely dangerous*”; there are aggravating features including the presence of the couple’s young child, evidence of gratuitous degradation through insults the respondent was hurling during the assault and his past driving offences.
17. Second, it is difficult to reconcile the judge’s sentencing comments, which forms the proper basis of the circumstances of the relatively recent index offence, with the FTT’s apparent acceptance of the partner’s evidence that she attempted to make withdrawal statements and did not support the prosecution case against the respondent.
18. Third, the FTT did not accept the SSHD’s submission that the respondent caused his partner physical, psychological and emotional harm at [37]. However, it is difficult to see how this could be disputed given the judge’s sentencing comments that the respondent was taken by ambulance to hospital having sustained a number of injuries and fractures to her collarbone, nose and finger. The psychological and emotional harm involved in such an assault by a partner are inevitable. In any event, the sentencing judge also referred to the partner having gone for some time to a woman’s refuge in an undisclosed location.
19. Fourth, the emphasis at [37] that the respondent showed remorse at the scene of the offence and contacted the emergency services himself was not placed in its proper context: the respondent did not plead guilty until the day of the trial on 24 August 2017 and maintained from the date of offence in April 2017 to June 2017 at least that his partner was drunk and he found her at the bottom of the stairs in that state.
20. For the reasons set out above, the FTT failed to take material matters into account when assessing whether the respondent presents a

genuine and sufficiently serious threat to the requirements of public policy / security. This renders its factual findings unsafe and the decision must be set aside.

### **Disposal**

21. We have had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and have decided that this is an appropriate case to remit to the FTT. This is because completely fresh findings of fact in relation to the assessment of risk in light of the updated evidence are necessary.

### **Decision**

22. The FTT decision contains a material error of law and is set aside.
23. The appeal is remitted to the FTT.

Signed: *UTJ Plimmer*

**Ms M. Plimmer**

**Judge of the Upper Tribunal**

Date:

**31 October 2018**