



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal no: DA/00430/2017

THE IMMIGRATION ACTS

Heard At Field House
On 02.07.2018

Decision and Reasons Promulgated
On 26.07.2018

Before:

Upper Tribunal Judge
John FREEMAN

Between:

Marina [U]
(anonymity direction not made)

appellant

and

Secretary of State for the Home Department

respondent

Representation:

For the appellant: *Bernadette Smith* (counsel instructed by IR Immigration Law LLP)

For the respondent: Mr Stefan Kotas

DECISION AND REASONS

This is an appeal, by the respondent to the original appeal, against the decision of the First-tier Tribunal (Judge Steven Lloyd), sitting at Birmingham on 13 December 2017, to allow a deportation appeal by a citizen of Latvia, born 1983. The applicant has a son, O, born 23 October 2005, and they arrived here in 2008. On 15 March 2013 she was involved in a fatal road traffic accident, and arrested for possession of class 'A' and 'C' drugs in her house and

NOTE: (1) *no anonymity direction made at first instance will continue, unless extended by me.*
(2) *persons under 18 are referred to by initials, and must not be further identified.*

car; but there was no suggestion that her driving had been affected by drug use. For the drugs offences she received, on 20 March 2014, a sentence of 18 months' imprisonment, suspended for 18 months.

2. The particularly serious offence of which the appellant was convicted was causing death by dangerous driving: mobile phone records show that she had sent and received both text messages and voice calls during her journey, though the records didn't cover the six minutes before the crash. The sentencing judge took the view that there was a very strong inference that she was distracted in some way by her phones (she had two with her) at the time: she had two relatively recent convictions for using them while driving. The judge described the victim as a kind and generous young man with great unfulfilled potential, much missed by his large and caring family: he had not contributed in any way to the crash, and it was the appellant who had had to brake hard on a wet road. The judge took into account both her late guilty plea (he found she had "... not a scrap of remorse"), and the likely effect of her imprisonment on O; as he pointed out, this was a case where the interests of society as a whole must take precedence. The appellant was also disqualified from driving for eight years: this and the period of imprisonment were upheld by the Court of Appeal (Criminal Division).
3. Permission to appeal was granted in the present case on the basis that the judge had arguably given too little weight to the interests of society: the OASys assessment found that the appellant had tended to minimize her rôle in the crash, and that she presented a medium risk of serious harm to the public. On the other hand, she had been a model prisoner, and responded well to supervision on licence.
4. The grounds refer to the relevant provisions of the Immigration (European Economic Area) Regulations 2016, which the judge had not expressly mentioned: it was agreed that the appellant had not been exercising Treaty rights for long enough to have acquired a permanent right of residence. The basic rules are in reg. 27:
 - (5) The public policy and public security requirements of the United Kingdom include restricting rights otherwise conferred by these Regulations in order to protect the fundamental interests of society, and where a relevant decision is taken on grounds of public policy or public security it must also 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 must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, taking into account past conduct of the person and that the threat does not need to be imminent;
 - (d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;
 - (e) a person's previous criminal convictions do not in themselves justify the decision;
 - (f) the decision may be taken on preventative grounds, even in the absence of a previous criminal conviction, provided the grounds are specific to the person.
 - (6) Before taking a relevant decision on the grounds of public policy and public security in relation to a person ("P") 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 P, P's length

of residence in the United Kingdom, P's social and cultural integration into the United Kingdom and the extent of P's links with P's country of origin.

5. There are further provisions in schedule 1:

3. Where an EEA national or the family member of an EEA national has received a custodial sentence, or is a persistent offender, the longer the sentence, or the more numerous the convictions, the greater the likelihood that the individual's continued presence in the United Kingdom represents a genuine, present and sufficiently serious threat affecting of the fundamental interests of society.

Paragraph 7 refers to the fundamental interests of society as involving both the protection of the public, and acting in the best interests of a child. *Kamki*[2017] EWCA Civ 1715 makes it clear (if it was not already) that it is legitimate to take the seriousness of the risk to the public together with the likelihood of its occurring.

6. The judge accepted the appellant's evidence that she would never drive again: as he pointed out, even if she had wished to when her period of disqualification ran out, she would have needed to pass an extended driving test. He referred to the risk of further offending as low, which was contrary to the OASys assessment (made in 2014, but re-issued in the same terms on 9 March 2017); but he accepted that the appellant had "... fully embraced every opportunity for rehabilitation that has been presented to her".
7. The basis for this was a detailed letter dated 14 August 2017 from the appellant's 'offender manager', to which the judge referred at length at 19. On that basis, the judge found that the appellant did not present the 'genuine, present and sufficiently serious threat' to the public required to justify her deportation in the first place; so he did not go on to consider the proportionality of removing her.
8. Mr Kotas suggested that the judge had focussed purely on factors in the appellant's favour, such as her efforts towards rehabilitation. As Miss Smith pointed out, the judge had mentioned her previous convictions for using a phone, not only in his summary of the respondent's case at 9, but in his own conclusions at 23. The letter referred to at 7 showed how the appellant had changed since her conviction, and the original OASys assessment, not to mention the sentencing judge's view of her attitude to her offence. The notes which formed part of the current assessment (at p 32) made it clear that a 'medium risk of serious harm' covered a case where "The offender has the potential to cause serious harm but is unlikely to do so unless there is a change of circumstances". That was the position with this appellant, who had given up driving.

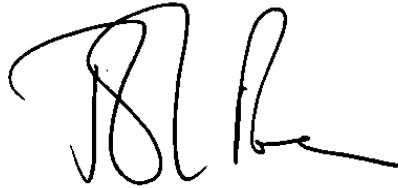
CONCLUSIONS

9. This appellant committed a very serious offence, which brought her a very serious sentence, particularly for the mother of a young child, who had never been sent to prison before. For once it seems to have reformed her: her previous convictions for using a phone while driving very clearly showed she was a menace to the public behind the wheel, with tragic consequences in the crash. However, the judge was entitled to accept that her attitude had changed, and that she would never drive again, and to regard her ties with her son and her mother (who had been looking after him here while she was in prison) as another reason

for her not to offend again. On that basis he was entitled to take the view that, by the date of the hearing, she no longer presented the 'genuine, present and sufficiently serious threat' required to justify her deportation.

10. It follows that the Home Office appeal is dismissed; but they should send a copy of my decision to the DVLA, just in case the appellant were ever to be tempted to drive again.

Respondent's appeal dismissed

A handwritten signature in black ink, consisting of stylized, cursive letters that appear to be 'JLR' followed by a horizontal line.

(a judge of the Upper Tribunal)

Dated 19 July 2018