Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00171/2019

THE IMMIGRATION ACTS

Heard at The Royal Courts of Justice	**Decision & Reasons Promulgated**
On 11 November 2019	**On 19 November 2019**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

TOMAS LUSAS
(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms J Lanigan, Counsel, instructed by BIDS
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by a citizen of Lithuania against the decision of the First-tier Tribunal to dismiss his appeal against the decision of the Secretary of State on 22 February 2019 to make the him the subject of a deportation order. The appellant appealed on the sole permissible ground that the decision breaches his rights under the EU Treaties. Permission to appeal to the Upper Tribunal was given on all grounds although the First-tier Tribunal drew attention to one ground as being the most promising. It was described as "just about arguable". I mean no disrespect to Ms Lanigan's entirely sensible (if not ultimately persuasive) submissions that the real complaint is that the First-tier Tribunal did not have proper regard to the obligation to allow the appeal unless satisfied that "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".

2. I begin by considering the First-tier Tribunal Judge's decision. The appellant said he arrived in the United Kingdom in August 2009 and first came to the attention of the tax authorities as a taxpayer in the tax year ending in April 2011. In November 2016 he was detained having been homeless and served with the appropriate notice that he was liable to removal. He appealed against that decision successfully and the notice was withdrawn in December 2017.

3. The appellant has misbehaved. On 23 January 2019, after he had been convicted of a number of offences over the years, he was served with a notice of liability to removal. He responded in handwritten representations but the Secretary of State decided to deport him and made him the subject of a deportation order that was signed on 22 March 2019. The core point is that he had been convicted of "thirteen offences in a six–seven year period". It was accepted that he had been exercising treaty rights in the United Kingdom for a continuous period of more than five years but less than ten years. His criminal behaviour is persistent and shows dishonesty and irresponsibility. Of particular significance is the conviction for being in charge of a motorcar with excess alcohol in his body in January 2012. He was also convicted of possessing class A drug methadone in October 2014. Still more seriously, on 5 June 2018 he was convicted of two sexual assaults against a female person and one of using threatening, abusive or disorderly words or behaviour. For these matters he was sentenced to nine weeks' imprisonment suspended for twelve months and made the subject of a rehabilitation order and an order to do unpaid work and to be registered as a sex offender for seven years. On 28 November 2018 he was convicted of supplying false information in purported compliance with an obligation imposed by the penalty for the sexual assaults and, consequentially, of committing a further offence during the operation period of a suspended sentences of imprisonment. He was imprisoned for two weeks.

4. The First-tier Tribunal found the appellant was a "persistent offender" in law. The judge recorded fifteen offences in nine years. Although there were significant gaps in the offending the judge found that the appellant had reoffended after receiving medical or other support and indeed after he had been made aware of his liability for removal. The judge also noted that the appellant had committed offences whilst in employment and whilst having accommodation. He was also enrolled as a student at the University of Suffolk. The judge noted how the absence of such things as work, shelter and purpose can sometimes be seen as triggers to committing offences. They were all present on at least some of the occasions that this appellant committed offences. His failure to surrender to custody when required and to provide accurate information for the purpose of registration as a sex offender were matters that concerned the judge. The judge also noted that the appellant had not been at liberty since he completed the methadone detoxification programme.

5. At paragraph 22 of the Decision and Reasons the judge specifically considered matters that were in the appellant's favour and point to his having improved prospects within the United Kingdom. These include his obtaining a certificate

in employability and certificates on elements of a foundation course. The judge also notes that there were intervals between the offences and the appellant had been capable of legitimate employment as well as starting a business studies course. The appellant had also agreed to take part in the methadone detoxification programme and had insight into the possibility of relapse. The judge did not know if any work had been done with the offender by the probation service.

6. Perhaps paragraph 23 is pivotal. There the judge says:

> "Given the appellant's relapse and reoffending after he engaged with medical and other services in or about October 2014, the very short time which has passed since he has completed the methadone programme, the very limited evidence of other work having been done to sustain his recovery, the lack of evidence to show other work done to address any other causes of the appellant's offending and the fact that he has remained in custody since the methadone programme ended I am not satisfied that the appellant is sufficiently secure in his recovery to have materially minimised the risk of reoffending."

7. The judge then went on to dismiss the appeal. The grounds do not complain about the judge's self-directions. Rather they say the judge did not follow her own directions that have been given.

8. Five grounds are identified.

9. Ground 1 is summarised as the "sufficiently serious threat". It is clear that the appellant has not committed the most serious offences. The most unpleasant punishment he has actually suffered is two weeks' detention. However the First-tier Tribunal clearly made a rounded evaluative exercise. It is right that the appellant had interludes of apparently lawful behaviour. The judge comments on it specifically. It is also right that the judge recognised a professed a change of heart on the part of the appellant. The judge found no evidence to show that that profession was well-founded. I do not see how that can be criticised.

10. There is no basis for complaining that the judge erred in determining that the appellant posed a sufficiently serious threat to justify deportation as the offences were not sufficiently serious to justify interference with his EEA rights. The offences vary in severity but I do not regard any of them as trivial.

11. I do not expect that honest travellers on the railway take very kindly to subsidising criminals or honest shoppers take very kindly to subsidising people who steal from shops. Any offence involving a mixture of motorcars and excess alcohol is a serious matter. Possession of class A drugs is a serious matter if only because the craving for the drug is so often linked with further criminality. A sexual assault against a female person varies in its seriousness but it is rarely, if ever, not serious.

12. The problem with the appellant's offending, as was clearly understood by the judge, is their persistence and their erosion of the good order of society as a whole. People who commit sexual assaults intimidate women generally so they are reluctant to go about their lawful business in public places even if the risk to them is only very slight. People who use threatening and abusive and disorderly words and behaviour likely to cause alarm or harassment again upset the peace for law-abiding people and make them frightened, or at least

disinclined to go visit public places. Cumulatively these offences are plainly enough to justify a finding that the appellant has a propensity to further criminal acts of sufficiently grave kind to justify his removal even though he is an EEA national unless there was some reason to think that the appellant had changed his lifestyle so that there was minimal risk of reoffending. The judge looked for such a thing and this has led to her being accused of reversing the burden of proof but that is wholly unjustified. All the judge did was show a willingness to accept the possibility of the appellant having changed his mind but then decided that the evidence that this appellant had changed his mind was not sufficient. I reject the criticism that the judge placed "too much weight placed on past convictions". Past convictions are facts that have to considered. They justify a conclusion that the appellant is engaged in escalating criminality and irresponsibility that may be drug fuelled. In this category I include fuelled by alcohol craving.

13. I do not accept there is any speculative finding regarding alcohol dependency. The appellant plainly has had a problem with alcohol. If he had not had a problem with alcohol he would not have been convicted of being in charge of a motor vehicle with excess alcohol in his body. That does not prove that he is an alcoholic or that that kind of behaviour is in any way typical but it is a problem with alcohol and he had it.

14. The most recent events of sexual assault and disorderly behaviour on the appellant's own account were facilitated by intoxication.

15. There is no error in finding that the decision is proportionate. The appellant is not deeply settled in the United Kingdom. He does not rely on any close family links or long history of stable employment. His own life is in an unhappy state and he has inflicted that unhappiness on other people. The decision that it was proportionate was clearly open to the judge. There is not too much weight on past convictions.

16. I have considered Ms Lanigan's submissions as well as the grounds. With respect they add nothing. The grounds were very full and her submissions were, appropriately, brief.

17. I appreciate the economy of her submissions but I dismiss the appeal. The problem here is not that the First-tier Tribunal Judge erred but that the appellant cannot behave.

Notice of Decision

18. No error of law has been established and I dismiss this appeal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 18 November 2019