Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: DA/00360/2018**

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
on 4 July 2019	**On 11 September 2019**

Before

Mr C M G OCKELTON, VICE PRESIDENT & UT JUDGE MACLEMAN

Between

GADEIKIS VYGANTAS

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr B Criggie, of Latta & Co, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Lithuania, was convicted at Dundee Sheriff Court on 30 June 2017 of offences of assault and attempted abduction, committed on 3 October 2015. He was sentenced to two imprisonment for two years, including a one-year supervision order.

2. On 15 May 2018 the SSHD decided to make a deportation order under the Immigration (EEA) Regulations 2016. The appellant had a permanent right of residence. The key consideration was whether the personal conduct of the appellant represented "a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, taking into account past conduct of the person concerned of the person and that the threat does not need to be imminent" – regulation 27(5)(c).

3. FtT Judge Blair dismissed the appellant's appeal by a decision promulgated on 19 December 2018.

4. The grounds of appeal to the UT found mainly on the assessment by the criminal justice social worker and supervising officer, prior to the appellant's release, that he presented a low likelihood of further offending. It is also pointed out that he had not re-offended while on bail for almost two years, or in the 5 months from release to the date of the FtT hearing, and that the judge erred in thinking that he was subject to a MAPPA level 1 arrangement (multi agency public protection arrangements to manage sexual and violent offenders) when he was subject only to the supervised release order for the second year of his sentence (which is standard).

5. The judge granting permission drew attention to *Oyston v Parole Board* [2000] EWCA Crim 3552. The Lord Chief Justice said this:

> Convicted prisoners who persistently deny commission of the offence or offences of which they have been convicted present the Parole Board with potentially very difficult decisions. Such prisoners will probably not express contrition or remorse or sympathy for any victim. They will probably not engage in programmes designed to address the causes of their offending behaviour. Since they do not admit having offended they will only undertake not to do in the future what they do not accept having done in the past. Where there is no admission of guilt, it may be feared that a prisoner will lack any motivation to obey the law in future. Even in such cases, however, the task of the Parole Board is the same as in any other case: to assess the risk that the particular prisoner if released on parole, will offend again. In making this assessment the Parole Board must assume the correctness of any conviction. It can give no credence to the prisoner's denial. Such denial will always be a factor and may be a very significant factor in the Board's assessment of risk, but it will only be one factor and must be considered in the light of all other relevant factors. In almost any case the Board would be quite wrong to treat the prisoner's denial as irrelevant, but also quite wrong to treat a prisoner's denial as necessarily conclusive against the grant of parole.

6. That was not in the same context, and was of course an English case, but Mr Govan accepted that denial of guilt did not automatically lead to a finding of ongoing risk. He said it did go into the balance, as showing lack of awareness, or of willingness to take responsibility.

7. Mr Govan accepted that the FtT erred in thinking that a MAPPA arrangement applied.

8. Mr Govan submitted that the FtT made no material error, such as to require its decision to be set aside.

9. We can see why the FtT judge was concerned by the appellant's insistence on his innocence, as was the sentencing Sheriff. However, the judge gave significance to the imposition of a supervision order, when that is only a standard requirement of release at the halfway point of a sentence, and he wrongly thought that MAPPA applied. The FtT was entitled to take a different view from Mr Omond, the criminal justice social worker and supervising officer, but only for good reasons. We find that the judge gave no adequate reasons for finding the assessment by Mr Omond to be illogical and ill-founded. The FtT essentially took denial of guilt not merely as relevant, but as conclusive. We therefore set aside its decision.

10. The most recent information from Mr Omond, dated 31 October 2018, applies a systematic approach, taking account of the appellant's denial of guilt, and finding that he remains "at low likelihood of further offending and low risk of harm".

11. The evidence does not show that the appellant poses a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

12. The appeal, as originally brought by the appellant to the FtT, is allowed.

13. The FtT made an anonymity direction, but for no apparent reason, so we discharge it, and this determination is not anonymised.

9 September 2019
UT Judge Macleman