IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001727

First-tier Tribunal No:
DA/00217/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 13 July 2023

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

Secretary of State for the Home Department

Appellant

and

Niks Rogacs
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr F Gazge, Senior Home Office Presenting Officer
For the Respondent: Ms K Tobin, Counsel instructed by Kalsi Solicitors Ltd

Heard at Birmingham Civil Justice Centre on 16 January 2023

DECISION AND REASONS

1. The appellant in the appeal before me is the Secretary of State for the Home Department ("SSHD") and the respondent to this appeal is Mr Niks Rogacs. However, for ease of reference, in the course of this decision I adopt the parties' status as it was before the FtT. I refer to Mr Rogacs as the appellant, and the Secretary of State as the respondent.

2. The appellant is a national of Latvia who claims to have arrived in the United Kingdom in 2011, aged 11. On 30 April 2020, the appellant was notified that the Secretary of State intended to make a deportation order against him on grounds of public policy and public security in accordance with regulation 23(6)(b) and regulation 27 of the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations 2016"). The appellant responded on 30 June 2020 and 24 March 2021 with a human rights claim.

3. Having considered the representations made on behalf of the appellant, on 24 July 2021 the respondent made a decision to make a Deportation Order. The respondent referred to the appellant's immigration history and the offences committed by the appellant. The respondent did not accept the appellant has been resident in the United Kingdom in accordance with the EEA Regulations 2016, for a continuous period of five years. In representations dated 30 June 2020 the appellant claimed he has lived in the UK for more than nine years. The respondent concluded the appellant has not acquired a permanent right of residence under the EEA Regulations 2016, and considered whether his deportation is justified on grounds of public policy or public security. The respondent concluded the appellant has committed serious criminal offences in the United Kingdom and the professional assessment is that there is a real risk that he may re-offend in the future. The respondent concluded the genuine, present and sufficiently serious threat the appellant poses to one of the fundamental interests of United Kingdom society, is such that the appellant's deportation is justified on grounds of public policy and public security in accordance with regulation 23(6)(b) of the EEA Regulations 2016. The respondent concluded the decision to deport the appellant is proportionate and in accordance with the principles of regulations 27(5) and (6).

4. The appellant's appeal against that decision was allowed by First-tier Tribunal Judge Karbani for reasons set out in a decision promulgated on 25 March 2022.

5. The respondent claims Judge Karbani has failed to give adequate reasons for finding that the appellant does not pose a genuine, present and sufficiently serious threat to the fundamental interests of society. Permission to appeal was granted by Upper Tribunal Judge Jackson on 26 July 2022. She said:

> "It is arguable that the First-tier Tribunal failed to give clear reasons for the findings made as to the risk posed by the Appellant and failing to take into account the consequences of re-offending. There are arguably contradictory findings about rehabilitation and the influence of the Appellant's parents."

<u>The hearing before me</u>

6. Mr Gazge adopted the respondent's grounds of appeal. He submits Judge Karbani gave inadequate reasons for the findings that she made. The respondent claims Judge Karbani found that the appellant does not pose a genuine, present and sufficiently threat to the fundamental interests of society. The basis of the finding is that the appellant has not re-offended since his release from Immigration detention on 3 December 2021, the

protective influence of his mother and step-father and some steps towards rehabilitation. The respondent claims:

a. A mere three months is insufficient to demonstrate that the appellant will not reoffend in the future.

b. In any event, Judge Karbani has failed to make a clear finding that the appellant does not pose a threat of reoffending. Neither is there a finding that the appellant's deportation is not justified on serious grounds of public policy.

c. Judge Karbani has failed to acknowledge the appellant's parents were unable to prevent his prolific, persistent and serious offending in the past and the appellant's attempts at rehabilitation amount to little more than unsupported assertions.

d. Judge Karbani failed to consider the seriousness of the consequences of re-offending in line with Kamki [2017] EWCA Civ 1715. The serious nature of the appellant's offences demonstrates that the potential consequences of re-offending are serious.

7. The respondent maintains the appellant's deportation is proportionate. There are no reasons associated with the appellant's age, state of health, family or other considerations why he should not be deported to Latvia. He is a young man with some work experience. There is no reason why he should be unable to find employment to support himself. Although Judge Karbani found there is no family property to accommodate the appellant, nor family members to support him, there is no reason why he should require either of these in order to integrate into Latvian society, where his rehabilitation may continue.

8. In reply, Ms Tobin submits Judge Karbani refers to the relevant legal framework at paragraphs [39] and [40] of her decision. Ms Tobin submits the judge reached a decision that was open to her on the evidence that was before the Tribunal and the findings made. At paragraph [46] of her decision, Judge Karbani had referred to the seriousness of the index offence and the OASyS report. Responding to the particular criticisms relied upon by the respondent, Ms Tobin submits the Judge was entitled to have regard to the steps being taken by the appellant to move away from criminal activity and the progress made by the appellant towards rehabilitation. At paragraph [51] the judge expressly found that the appellant no longer represents a genuine, present, and sufficiently serious threat to the fundamental values of society.

9. Ms Tobin submits the judge had noted, at [43], that the appellant came to the UK with his mother as a young child aged 11, and lived with his mother and stepfather ("the appellant's parents") throughout his time in the UK, and was attending school until the age of 16. She found the evidence of the appellant's parents to be credible and that they were genuinely dismayed and shocked at the appellant's behaviour. Their evidence, which was accepted, was that they have noted tangible differences in the appellant's behaviour such as his ability to speak to them. The judge found the presence and support of his parents, and the appellant's desire

to make his mother proud of him, is integral to his rehabilitation. The Judge found the appellant had given detailed and convincing evidence regarding the extent of his remorse and his acknowledgement of the impact of long-term drug abuse. At [48] the judge acknowledged the fact that the appellant had been unable to attend courses for reasons beyond his control, and in the end, he took the initiative. The OASys report was somewhat dated, but there was a letter from the probation officer dealing with the appellant's more recent conduct. The judge was entitled to have regard to that evidence as evidence of rehabilitation

10. Ms Tobin submits that in MC (Essa principles recast) Portugal [2015] UKUT 250 the Upper Tribunal confirmed that the reasonable prospects of a person ceasing to commit crime is a factor to be taken into account in the proportionality assessment.

11. Ms Tobin submits that in Kamki v SSHD, the Court of Appeal was concerned with an appeal in which the evidence was that the probability of offending generally was low, but that the probability of offending against vulnerable young females was high. The Court was therefore concerned with not only the probability of reoffending but also the consequence of re-offending. Here, the judge found that the risk of reoffending had reduced because of the rehabilitation. The judge found the rehabilitation would continue and it was therefore open to the judge to find that the appellant no longer represents a genuine, present, and sufficiently serious threat to the fundamental values of society.

Decision

12. It is useful to begin with the EEA Regulations 2016. Regulation 23(6)(b) provides that an EEA national who has entered the United Kingdom may be removed if the respondent has decided that the person's removal is justified on grounds of public policy, public security or public health in accordance with regulation 27. The protection against expulsion provided for in the Directive 2004/38 gradually increases in proportion to the degree of integration of the EU citizen concerned in the host Member State.

13. The issues in the appeal are set out at paragraph [10] of the decision of the First-tier Tribunal:

> "10. As agreed, the issues were the level of protection that the appellant was entitled to under regulation 27 of the EEA regulations 2016, as well as the issue of proportionality. There was no dispute as the appellant's offences as set out in the decision letter."

14. The appellant, his mother and step-father attended the hearing of the appeal and gave evidence. The appellant accepted he has committed 33 serious offences over a period of 18 months. The judge's findings and reasons are set out at paragraphs [42] to [51] of the decision.

15. The judge found the appellant arrived in the UK in June 2011 as claimed. Judge Karbani was satisfied that both the appellant's mother and step-father have acquired permanent residence in the UK. At paragraph [43] she went on to say:

> "… I am further satisfied that the appellant who came to the UK with his mother as a young child aged 11, lived with them throughout his time in the UK, and was attending school until the age of 16. On the balance of probabilities, I find that he acquired the right of permanent residence during this period as their dependent child."

16. At paragraph [44] of her decision Judge Karbani considered the appellants integration and the sentences of imprisonment imposed following convictions. She found that as at the date of the relevant decision, the appellant had not acquired 10 years continuous residence within the meaning of the Directive. She was not therefore satisfied that the appellant is entitled to the higher protection of imperative grounds on account of having lived in the UK continuously for a period of 10 years.

17. Judge Karbani found the appellant has acquired the right of permanent residence. That finding is not challenged. In accordance with Regulation 27(3), the focus turns to whether respondent has established "serious grounds of public security".

18. As far of the index offence is concerned, at [46], Judge Karbani said:

> "I find that the appellant has committed a very serious offence. His index offence of robbery was of a despicable kind which preyed on a vulnerable victim. The sentencing judge noted it was only his age and discount for guilty plea which reduced his sentence. The OASYS report makes for equally unfortunate reading. The appellant presented with no remorse, or understanding as to the impact of his behaviour. There was no indication at that time that he understood or took responsibility for the impact of his drug use, or the choices he made in terms his company or the consequences of his actions for other people."

19. A finding as to whether the conduct of the appellant represents a genuine, present and sufficiently serious threat is a prerequisite for the adoption of an expulsion measure and it is only upon such a threat being established, that the issue of proportionality arises. Contrary to what is said by the respondent it is clear that standing back and looking at the evidence before the Tribunal holistically, Judge Karbani found, at [51], that the appellant no longer represents a genuine, present, and sufficiently serious threat to the fundamental values of society.

20. Judge Karbani plainly had the seriousness of the index offence in mind. The OASys Assessment concluded on 10 February 2020 concluded that the appellant presents as a medium risk of serious harm to the public in the Community. At paragraphs [47] to [50], Judge Karbani referred to the evidence before the Tribunal. At [49], she said:

> "… I find that [the appellant's parents] were genuinely dismayed and shocked at the appellant's behaviour. I find that they have always been supportive. I find that they have noted tangible differences in his behaviour such as his ability to speak to them. Although they have not moved address, there is no indication that he is keeping the same friends as before. In light of this evidence I find it credible that the appellant is no longer taking drugs and is no longer keeping those same friends. Although he has only been released from immigration detention three months ago, I find that given his previous level of immaturity and prolific offending, there is an inference to

> be drawn from this change in behaviour that he has rehabilitated to some extent. I find that it is likely that his rehabilitation will continue, and that he will make efforts to work and change his life in the UK for more positive outcomes. I find that the presence and support of his parents, and his desire to make his mother proud of him, is integral to his rehabilitation."

21. Although it is correct that the appellant's parents had been unable to prevent the appellant offending previously, Judge Karbani was persuaded by the oral evidence that she heard that the appellant is no longer taking drugs and is no longer keeping the same friends. She was persuaded by the evidence of the appellant's parents' that they have noted tangible differences in his behaviour.

22. In Kamki v SSHD, the Court of Appeal referred to the distinction between two different senses of risk. First, the risk posed by the appellant to society and second, the risk posed by the appellant to vulnerable young females. The distinction there was particularly relevant on the facts of that case, because as Sales LJ said, the fact that the appellant did not accept his guilt made the present threat even more acute. Here, the appellant accepts his guilt, now expresses remorse, and has taken steps to rehabilitate.

23. A relevant decision taken on grounds of public policy or public security must in any event comply with the principle of proportionality.

24. Judge Karbani found that the appellant's links to Latvia are now limited. The appellant has only returned on three occasions for very short periods of time. She found the appellant's mother does not have a property that will be made available to the appellant on return and that there is no indication that he has any connection to any family remaining there. She accepted the appellant has no relationship with his father and that there is no possibility that his father will offer the appellant any assistance. At paragraph [51], Judge Karbani concluded:

> "Overall, I find that the appellant no longer represents a genuine, present, and sufficiently serious threat to the fundamental values of society. I find that his rehabilitation, albeit tentative, is positive and is likely to continue. I find that he will need the support of his parents to succeed in this. I find they are likely to remain in the UK as they have settled and established their working lives here. I find that the appellant will find it difficult to integrate into Latvia without the presence of his parents. Taking all these factors in the round, I find that the decision to deport him does not comply with the principle of proportionality."

25. Having considered the decision of Judge Karbani I am satisfied there is no merit to the general claims made in the respondent's grounds of appeal. I have reminded myself of what was said in MD (Turkey) v SSHD [2017] EWCA Civ 1958 that adequacy of reasons means no more nor less than that. It is not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, even surprising, on their merits. The purpose of the duty to give reasons, is in part, to enable the appellant to know why he has lost, and it is also to enable an appellate court or Tribunal to see what the

reasons for the decision are, so that they can be examined in case there has been an error of approach.

26. Judge Karbani gives adequate reasons for the findings she made. A fact-sensitive analysis was required. The findings and conclusions reached by the judge were neither irrational nor unreasonable in the Wednesbury sense, or findings and conclusions that were wholly unsupported by the evidence. Here, it cannot be said that the Judge's analysis of the evidence is irrational or perverse. The Judge did not consider irrelevant factors, and the weight that she attached to the evidence either individually or cumulatively, was a matter for her. The conclusion reached by the judge was based on the particular facts and circumstances of this appeal and the strength of the evidence before the Tribunal. Where a judge applies the correct test, and that results in an arguably generous conclusion, it does not mean that it was erroneous in law.

27. I accept as Ms Tobin submits, the respondent simply disagrees with the findings and conclusions that were open to Judge Karbani.

28. It follows that I dismiss the appeal.

Notice of Decision

29. The appeal is dismissed and the decision of First-tier Tribunal Judge Karbani stands.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 June 2023