IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003028

First-tier Tribunal No: DA/00001/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

30th January 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ARUNAS RASIKAS
(Anonymity Order not made)

Respondent

Representation:
For the Appellant: Mr T Lindsay, Senior Home Office Presenting Officer
For the Respondent: No Appearance

Heard at Field House on 25 January 2024

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Mr Rasikas's appeal against the respondent's decision to make a deportation order against him in accordance with regulation 27 of the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations"), as saved by the Citizens' Rights (Restrictions of Rights of Entry and Residence)(EU Exit) Regulations 2020.

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2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and Mr Rasikas as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is a citizen of Lithuania, born on 27 March 1992, who first entered the UK in June 2009 at the age of 16/17 years. He left the UK for 9 months after his partner gave birth to their daughter on 14 April 2014, returning in April 2015 with his partner and child. He made an application under the EU Settlement Scheme (EUSS) which was rejected in 2019 but he was granted indefinite leave to remain under the EUSS on 27 April 2020.

4. The appellant amassed 4 convictions for 10 offences between 7 February 2017 and 17 February 2021 and was convicted on 17 February 2021 of possessing an offensive weapon in a public place, possessing a firearm with intent to cause fear of violence and wounding/ inflicting grievous bodily harm. He was sentenced to a total of 2 years and 8 months' imprisonment.

5. On 23 April 2021 the appellant was issued with a stage 1 liability to deportation decision, pursuant to the EEA Regulations 2016, to which he responded on 24 May 2021, making representations and providing supporting evidence.

6. On 9 December 2021 the respondent made a deportation order pursuant to regulation 23(6)(b) of the EEA Regulations 2016 and on 10 December made a decision to deport the appellant on grounds of public policy. The decision was certified under regulation 33 so that the appellant could be removed from the UK notwithstanding that the appeal process has not yet begun or been exhausted. He continued to be detained, pending removal, and was removed to Lithuania on 1 February 2022.

7. In the deportation decision, the respondent did not accept that the appellant had been continuously resident in the United Kingdom for 10 years in accordance with the EEA Regulations 2016, since he had left the UK and returned to Lithuania for a year, and therefore did not accept that he qualified for the highest level of protection, of imperative grounds of public security. The respondent accepted that the appellant had permanent residence in the UK and therefore considered whether his deportation was justified on serious grounds of public policy or public security. The respondent noted that the victim of the appellant's offence had sustained a shot to his right cheek from a BB gun and that the pellet had embedded in front of his right ear and was deemed too risky to be removed surgically. The appellant believed that his partner had been unfaithful to him with the victim and had gone out to search for him whilst intoxicated, having previously gone in search of him with a baseball bat and been arrested and bailed. The respondent considered that the appellant had been convicted of offences that were extremely serious in nature and that his conduct was deemed likely to cause public offence. It was noted that in his OASYS assessment the appellant had been found to pose a high risk of harm to a known adult and a medium risk of re-offending. The respondent accordingly considered that the appellant's deportation was justified on grounds of public policy in accordance with regulation 23(6)(b) of the EEA Regulations 2016, as saved and that the decision to deport him was proportionate and in accordance with the principles of regulations 27(5) and (6). With regard to Article 8, the respondent did not accept that the appellant's partner and child were British citizens and did not accept that he had a genuine and subsisting relationship with them. The respondent did not accept that the exceptions to deportation were met on private or family life grounds and did not accept that there were very compelling circumstances which outweighed the public interest in his deportation.

8. The appellant appealed against the deportation decision. Following directions from the Tribunal the respondent served a supplementary refusal letter dated 28 February 2023, clarifying the appellant's immigration history and confirming that the level of protection to which he was entitled under the EEA Regulations 2016 was considered to be the 'serious grounds' level of protection.

9. The appellant's appeal was heard on 18 April 2023 in the First-tier Tribunal by Judge Swaney. The appellant observed the hearing by video-link from Lithuania but did not give oral evidence as he had not applied for the appropriate permission from the Lithuanian authorities. His partner gave evidence via telephone.

10. Judge Swaney considered whether the appellant was entitled to the highest level of protection, on imperative grounds. She noted that the appellant had returned to Lithuania in June 2014 for 9 months until 22 April 2015 but she did not find that that period of time broke the continuity of residence in the UK or his integrative links. She did not consider that his criminal convictions between February 2017 and the index offence had caused his integrative links to be broken and she noted that by the time of his conviction in February 2021 he had already resided in the UK continuously for more than 10 years. She found that the appellant's criminal offending, anti-social behaviour, and imprisonment had not been sufficient to sever the integrative links that had been forged prior to his offending and found that he was entitled to enhanced protection, such that the respondent was required to justify his deportation on imperative grounds of public security. She found that the appellant did not represent a genuine, present and sufficiently serious threat to one of the fundamental interests of society and that the respondent had not shown that his deportation was justified on imperative grounds of public security. She accordingly allowed the appeal.

11. Permission to appeal against that decision was sought by the respondent on two grounds: firstly, that the judge had made a material misdirection of law and provided inadequate reasoning in regard to proportionality; and secondly, that the judge had made a material misdirection in law and provided inadequate reasoning in regard to the question of integrative links.

12. Permission was refused in the First-tier Tribunal but was subsequently granted on a renewed application in the Upper Tribunal, on the grounds that it was arguable that, despite lengthy self-directions, the First-tier Judge's reasoning was inadequately reasoned and in part speculative.

13. The matter came before me for a hearing. There was no appearance by or on behalf of the appellant. His representatives had emailed the Tribunal the previous day requesting that the appeal proceed in their absence and that the decision of the First-tier Tribunal be upheld. Further communication on the day of the hearing confirmed that the appellant would not be in attendance and neither would any witnesses.

14. I heard submissions from Mr Lindsay who also relied on the skeleton argument of his colleague Mr Clarke which had been filed with the Tribunal some time earlier.

Discussion

15. As Mr Lindsay accepted, Judge Swaney correctly self-directed herself as to the relevant case law and legal principles at [26] to [28]. His submission was that, despite that self-direction, the judge did not conduct a proper fact-sensitive assessment of the strength of the appellant's ties to the UK, but rather undertook a binary approach to whether the integrative ties had been broken. That submission reflects the assertion in

the skeleton argument at [21] that the judge conflated questions of continuity of residence and integrative links and failed to engage with the substance of the appellant's ties. It is also reflected in the grant of permission which was made on the basis that, despite lengthy self-directions, the judge's reasoning was inadequately reasoned and in part speculative.

16.I do find substantial merit in all these points. On its face, the judge's decision appears to be a comprehensive assessment of the relevant considerations in assessing the level of protection to which the appellant was entitled under the EEA Regulations. However a more careful reading of the decision shows that there was a lack of reasoning as to how the substance of the appellant's ties was such that he could be considered to have been fully integrated into the UK.

17.The evidence before the judge was limited. She did not hear from the appellant himself. At [31] she referred to his length of residence in the UK since the age of 17 and his family ties. However, she did not elaborate on the nature of his family ties and she did not consider the substance of those ties, nor explain how those ties demonstrated integration into the UK. Indeed, at [33], she accepted that extensive familial and societal links with persons of the same nationality or language did not amount to integration, and that a significant degree of wider cultural and societal integration needed to be present to demonstrate integration in the UK.

18.Although the judge relied on the appellant's years of residence in the UK since the age of 17, it is notable that, at [32], she observed that there was very little evidence about his life in the United Kingdom prior to his imprisonment. At [34] she relied upon the appellant's employment record as evidence of integration. However, as Mr Lindsay quite properly pointed out, the extent of that evidence was simply HMRC records showing a variety of short-term positions held and work for various agencies and companies, and there was no consideration by the judge as to the nature of those jobs nor any explanation as to how that demonstrated integrative links to the UK.

19.Other than the fact that the appellant chose to bring his partner and child to live in the UK, that was the extent of the evidence upon which the judge relied in finding that he was integrated in the UK. The remainder of her findings simply focussed on how his absence from the UK did not break his continuity of residence in the UK, without any assessment of the content of that gap in residence in the overall context. As Mr Lindsay submitted, the fact that the appellant maintained a relationship with a partner in Lithuania for several years and then spent a substantial period of time in Lithuania with her and with his family after the birth of his child tended to suggest strong ties to Lithuania rather than to the UK and the judge had failed to give adequate consideration to that matter. Likewise, at [41] to [43], the judge's findings focussed on how the appellant's criminal offending between 2017 and 2021 did not break his integrative links, rather than being based upon any substantive analysis as to how such behaviour was consistent with integration. Other than a passing reference to the appellant's behaviour towards his partner, the judge did not appear to give consideration to his history of domestic violence towards her and the concerns of social services for his child, as referred to in the OASys report, but she simply relied upon his partner's continued support.

20.It is the respondent's case that, in the light of the above, by the time the judge came to consider the index offences and prison, there had been a wholly inadequate assessment of the integrative links that had already been accumulated, such that she was unable to properly assess the impact of prison. I agree. The judge's finding that the appellant benefitted from the imperative grounds threshold was therefore

fundamentally flawed. I agree with Mr Lindsay that that error materially impacted upon the judge's assessment of whether the appellant posed a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, but that her assessment of that threat was in itself also flawed and was based partly upon speculation, as the respondent properly asserts at [25] and [27] of the skeleton argument.

21.For all these reasons I agree with the respondent that the judge's decision was inadequately reasoned and lacking in proper analysis. The Secretary of State's appeal is therefore allowed and the judge's decision set aside.

22. It seems to me that given the extent of the errors and the fact-finding that would be necessary on a re-making of the decision, the appropriate course is for the case to be remitted to the First-tier Tribunal to be heard *de novo* before a different judge with no findings preserved.

Notice of Decision

23. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The Secretary of State's appeal is allowed and the decision is set aside.

24. The appeal is remitted to the First-tier Tribunal pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), to be heard before any judge aside from Judge Swaney.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

26 January 2024