**IN THE UPPER TRIBUNAL**
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-001246

First-tier Tribunal No: EA/00315/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**
**On 19 September 2023**

**Before**

**UPPER TRIBUNAL JUDGE KEITH**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**PAULIUS URNIEZIUS**
**(NO ANONYMITY ORDER MADE)**

Respondent/Claimant

**Representation:**
For the Appellant: Ms A Ahmed, Senior Home Office Presenting Officer
For the Respondent/ Claimant: Ms E Urnieziute, sponsor and the claimant's sister

**Heard at Field House on 7th August 2023**

**DECISION AND REASONS**

1. These written reasons reflect the oral decision which I gave to the parties at the end of the hearing. I refer to the appellant as the Secretary of State, and to the respondent as the claimant, for the remainder of these reasons.

**Background**

2. The claimant applied for entry clearance as an EEA national exercising treaty rights, which the respondent refused on 4th December 2020, under Regulation 23 of the Immigration (EEA) Regulations 2016. This was on the basis that in her view, there were serious public policy grounds for refusal and that to refuse the claimant admission was proportionate, in light of what she says were the threats posed by the claimant to the fundamental interests of society.
3. In her decision, the Secretary of State also referred to the claimant not having any immediate family in the UK and the lack of previous integration in the UK to

any significant degree. Her decision was made on 4th December 2020 and the claimant appealed this on 29th December 2020, so it was before the end of the transitional period prior to the UK's withdrawal from the EU. Accordingly, there is no dispute that his EU appeal rights were preserved.

4. The claimant appealed against that decision and was content for his decision to be considered on the papers. Judge of the First-tier Tribunal Colvin considered his appeal, without a hearing, and in a decision dated 17th January 2022, allowed his appeal.

**The Judge's reasons under challenge**

5. At the core of the Judge's decision was whether the refusal of admission to the UK was justified on serious grounds of public policy, due to the claimant's criminal history and in particular, prior to his entry to the UK, the claimant having been convicted and imprisoned in his country of origin, Lithuania, for robbery and assault in 2011 for which he had served one year and four months. On arrival in the UK, he had been cautioned in 2012 for theft and kindred offences, having been in possession of an offensive weapon, and then in 2015 it is said that an arrest warrant was issued in the UK for possession of an offensive weapon and immigration offences but before that warrant was served, the claimant left the UK. The Secretary of State's case as elaborated by Ms Ahmed is that this was conduct blameworthy because in essence, he fled the UK to avoid arrest, whereas Ms Urnieziute says that he was unaware of the arrest warrant before his departure and left for other reasons.

6. The Judge considered the claimant's case that his 2011 conviction was no longer reliable evidence that his personal conduct represented a genuine, present and sufficiently serious threat as it was more than 10 years prior to his most recent application for entry clearance. His 2012 offending was relatively minor as reflected in the fact that he had only received a caution. He claimed to be a reformed character in respect of the matter when he was last caught with an offensive weapon in 2015 and he disputed that he left the UK in light of the arrest warrant. He also added that he had two family members in the UK, namely sisters who were willing to take him in, and his previous integration was evidenced by the fact that he had worked here throughout his stay and had a job lined up for him, were he allowed to return.

7. In reaching her decision, the Judge referred at §8 to Regulations 23 and 27 of the 2016 Regulations, including the principle of proportionality and importantly, that the conduct of the person must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, taking into account the past conduct of the person.

8. The Judge noted, at §11, the lack of information regarding the claimant's immigration history and any claim that he had been living in the UK between 2011 and 2015, for which there was no evidence, in particular that he had permanent residence and no details about any employment. The Judge considered at §12 the respondent's own guidance issued in December 2017 about the principles of Regulation 27, and at §13 considered the claimant's previous sentence and the fact that it would have been treated as spent under the Rehabilitation of Offenders Act 1974 had he been convicted of it in the UK. In contrast, the conviction for which he had received a caution in the UK was for a relatively serious offence and moreover, the Secretary of State had to establish that the convictions showed that the claimant posed a genuine, present and

sufficiently serious threat. Apart from the prior criminal conviction in Lithuania, the Judge concluded that she did not have evidence before her to show on the balance of probabilities that the claimant posed such a threat. There was also no evidence to support the Secretary of State's assertion that the claimant had not previously integrated in the UK, whilst the claimant had specifically referred to having two sisters who had lived here for over 10 years and had provided their names and addresses. At §15, the Judge went on to consider the proportionality of the decision and in the absence of the relevant threat posed by the claimant, concluded that the mere fact that he had committed offences in the past did not in her view support the Secretary of State's conclusion that the decision to refuse entry clearance was proportionate. In simple terms, the Secretary of State had not discharged the evidential burden.

**The Secretary of State's appeal**

9. In her appeal, the Secretary of State asserts that the Judge had failed to consider the claimant's conduct in addition to his conviction in Lithuania, which had prompted the 2015 arrest warrant and the 2012 caution. Moreover, the Judge had erred in failing to consider whether the claimant was rehabilitated, as the passage of time was not, in itself, determinative of rehabilitation. Finally, the mere fact that the claimant may have two sisters living in the UK was not evidence of family life, nor relevant for the purposes of Regulation 27. There was no evidence, for example, of dependency or any relationship between adult siblings that would render an exclusion decision disproportionate.

10. Whilst permission was initially refused by the First-tier Tribunal, Upper Tribunal Judge Lane granted permission on all grounds on 1st September 2022.

**The Hearing before me**

11. The claimant was represented by one of his sisters, Ms Urnieziute. I confirmed with her, first of all, that she was content for the hearing to be conducted in English, which she was comfortable with, and I also indicated that if at any stage she did not understand the submissions made by Ms Ahmed or my questions or comments that she should let us know straight away. I am grateful to Ms Ahmed for making her submissions in simple and straightforward terms.

12. There was no Rule 24 response from the claimant but Ms Urnieziute did point out, the fact that the claimant had a couple of months after the decision under challenge in fact been permitted to enter the UK, about which Ms Ahmed made enquiries. We adjourned briefly whilst Ms Ahmed took instructions. She returned to the hearing confirming that the claimant had indeed been granted admission on 11th March 2022 intending to visit for a month. The period of the visit visa was six months and had been granted following an interview. There is no suggestion that the claimant has not complied with his visa requirements. He entered, visited relatives and returned to Germany, where he now works. Ms Ahmed suggested that the reason for the later grant of entry clearance was a mistake, made on the basis that the claimant's appeal had been allowed, without recognising the Secretary of State's ongoing appeal. However, I am conscious that this appeal relates to something more than visit visa rights and relates to the exercise of legacy EEA free movement rights.

13. I come on to the question of whether the Judge had erred in law. I do not recite the various submissions, except where necessary to explain my decision.

14. The Judge granting permission, Judge Lane, had noted that the evidence was relatively slim but he had been concerned as to whether the reasoning was sufficient and indeed, it is this that forms the basis of the challenge, specifically the sufficiency of the reasoning. It is in relation to the three aspects that I have already outlined. The first aspect is in relation to what is said about the claimant fleeing the UK because of the arrest warrant. The second is an alleged absence of reasoning in relation to rehabilitation. The third point is in relation to the Judge's reasoning in relation to family life. I bear in mind that Judge was herself conscious of the limited evidence.

15. The Judge correctly reminded herself of the relevant law (as to which there is no challenge) and focused in §5 on the claimant's claim to have had a job lined up on return to the UK and his rejection of the Secretary of State's assessment that he represented a genuine or serious threat. The Judge was unarguably conscious of the claimant's offending history, referring to it at §10. At §11, she considered the issue of the 2015 arrest warrant. I do not, however, accept Ms Ahmed's submission that Judge was obliged to resolve the issue that the claimant had purposefully left the UK to avoid the arrest warrant. In her exclusion decision, the Secretary of State recorded the outstanding arrest warrant and the claimant's departure, but did not put her case as high as now put, namely that the claimant fled in order to avoid arrest. The Judge cannot therefore be fairly criticised for not considering an allegation that was never part of the Secretary of State's case. What the Judge was entitled to do, as the Judge unarguably did, was to consider was that there was an outstanding arrest warrant, the risk in respect of which could be resolved by the warrant being enforced, if thought appropriate, on the claimant's return to the UK.

16. I also do not accept that the Judge erred in relation to the question of rehabilitation. The Judge was unarguably conscious of that fact, referring, by analogy, to the Rehabilitation of Offenders Act at §13. The Secretary of State seeks to criticise that and says the mere passage of time does not provide sufficient evidence of rehabilitation. The answer to that is that the Judge explained at §14 that the fact that the claimant had committed past criminal offences did not mean that there was sufficient evidence that the Secretary of State had shown that the claimant represented a present threat. Put another way, the question of rehabilitation is a slightly different one to the question that the Judge was entitled to consider, namely whether the Secretary of State had proven that the claimant posed a present threat. The Secretary of State's case relied, in material part, on an old conviction, albeit a serious one. The Judge's explanation is adequate.

17. I turn to the final element of challenge in relation to the Judge's consideration of any family life within the UK. The Judge had found that there was no evidence to support the Secretary of State's claim that the claimant had not previously integrated into the UK in any significant degree. In contrast, the claimant had positively advanced the case that he had family members in the UK with long-standing links, and gave their names and addresses, to whom he was sufficiently close that they were willing to assist him with accommodation. Whether that is sufficient to constitute family life for Article 8 ECHR purposes, is not necessary for those family connections to be relevant to the proportionality assessment under the 2016 Regulations and specifically here, the claimant's desire to exercise free movement rights to join his sisters in the UK. He did not need to show dependency or something more than a normal relationship between siblings for it

to be a relevant factor. The Judge did not err in considering those family connections as a relevant factor and her conclusions were sufficiently explained.

18. Ultimately, as the Judge did at §15, there was a requirement to apply the principle of proportionality in the round. Without more evidence as to the threat posed by the claimant beyond the fact of the offences in the past, the Judge was entitled to reach the decision that she did. Her decision was clearly structured, albeit on very limited evidence, and adequately explained.

**Notice of decision**

19. The Judge's decision discloses no error of law and stands. The Secretary of State's appeal is dismissed.

**J Keith**

Judge of the Upper Tribunal
Immigration and Asylum Chamber

**23rd August 2023**