



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: DA 00466 2013

THE IMMIGRATION ACTS

**Heard at Field House
On 12 March 2014**

**Determination Promulgated
On 11 April 2014**

Before

THE HONOURABLE MR JUSTICE K B PARKER
(Sitting as a Judge of the Upper Tribunal)
UPPER TRIBUNAL JUDGE PERKINS

Between

M A C
ANONYMITY ORDER MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss N Nnamani, Counsel, instructed by Trott & Gentry
Solicitors

For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. Much of this determination concerns the appellant's child, now aged almost 5 years, whose anonymity needs to be preserved. Pursuant to rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 the Tribunal makes an order prohibiting the disclosure of publication of any information likely to lead members of the public to identify the appellant's child and any breach of the order shall be punishable as a contempt of court.
2. The appellant is an Italian national and therefore a national of an EEA state. He was born on 14 May 1982 and so is now almost 32 years old. Pursuant to rule 26 of the Immigration (European Economic Area) Regulations 2006 he appeals the decision of the respondent on 19 December 2012 to make him the subject of a

deportation order. The respondent was satisfied that the appellant posed “a genuine, present, and sufficiently serious threat to the interests of public policy” if he was allowed to remain so that his deportation was justified. The notice of decision was sent to the appellant under cover of a letter dated 19 February 2013.

3. His grounds of appeal, dated 4 March 2013, assert that the appellant is an EEA national who has resided continuously in the United Kingdom since 1992 and has therefore acquired a permanent right of residence because he has resided in the United Kingdom for more than ten years. According to the grounds the decision to deport the appellant could only be made on “imperative grounds of public security” and no such grounds exist in this case. The grounds further assert that removing the appellant would interfere disproportionately with his private and family life given the amount of time that he has spent in the United Kingdom and also that it would not be in the best interests of his 3 year old daughter whose relationship with her father, the appellant, would be marred by reason of his being deported.
4. The appeal came before the First-tier Tribunal and was dismissed in a determination dated 23 August 2013. That determination was wrong in law and was set aside by Upper Tribunal Judge Eshun. She said:

“1. The appellant, whose mother is British and father is Italian, most recently arrived in the UK in 1995. According to the respondent, the fact that his mother is British does not automatically entitle the appellant to British citizenship. The appellant has not provided any evidence that he has been registered as a British citizen since his arrival here. He is therefore considered to be an Italian national.

2. On 24 December 2012, the respondent made a decision to deport the appellant in light of his conviction at Guildford Crown Court on three counts of burglary and theft, theft of vehicle and handling stolen goods for which he sentenced to 18 months imprisonment. The appellant has 35 convictions for 79 offences in the UK.

3. The appellant’s appeal against the respondent’s decision was dismissed by the First-tier Tribunal on grounds of deportation and Article 8 of the ECHR. Permission to appeal the decision of the First-tier Tribunal has been granted principally on the basis that the First-tier Tribunal did not properly consider the deportation of the appellant within the context of Immigration (EEA) Regulations 2006 and, in particular, had not correctly applied the test of “imperative grounds of public security”. The second ground argued that the First-tier Tribunal erred in rejecting the appellant’s account largely due to his acquisitive nature of his convictions and erred in their assessment of the appellant’s contact with his daughter.

4. The FtT accepted that the appellant was born in 1982. His period of residence on a continuous basis in the UK began in 1995. He has exceeded a period of 10 years in the UK on this basis. His offending now comprising 79 offences began in 1998. The level of offending was relatively low before the appellant became an adult. The range and breadth of his offending has only become established after he became an adult with the level of intensity increasing after 2003. He has been given every opportunity by the courts to reform and he has rejected them all.

5. Both parties agreed that the test for the consideration of “imperative grounds of public security” is high. In **FV (Italy) EWCA Civ 1199**, the Court of Appeal at [89] relied on **PI** where *it was recognised that the concept of “imperative grounds of public security” presupposes “not only the existence of a threat to public security, but also that such a threat is of a particularly high degree of seriousness, as is reflected by the use of the words “imperative grounds.”*

6. At [88] the Court of Appeal said the test to be applied was stated by the Grand Chamber in **Tsakouridis** – *in the application of Directive 2004/38, a balance must be struck between the exceptional nature of the threat to the public security as a result of the personal conduct of the concerned, assessed if necessary at the time when the expulsion decision is to be made on the one hand; and on the other hand, the risk of compromising the social rehabilitation of the Union citizen in the State in which he has become a genuinely integrated...*

7. With this test mind, I find that the FtT erred in law for the following reasons.

- (i) The FtT considered “imperative grounds of public security” through the prism of the appellant’s criminal conduct.
- (ii) The appellant’s level of integration was also considered through the prism of his criminal conduct.
- (iii) The FtT’s finding at [48] that the appellant had persisted in conduct which represented a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society was in consideration of Reg 21(5). However, having found that the appellant has resided in the UK continuously for 10 years, the decision to deport could only be considered on “imperative grounds of public security”. Therefore the FtT erred in their finding at [48].
- (iv) The FtT failed to carry out the balance set out in **Tsakouridis**.

8. In respect of the appellant’s appeal under Article 8 of the ECHR, I find that the FtT could only consider the evidence that was before them in relation to the appellant’s contact with his daughter. However, bearing in mind what is recorded in paras 24 and 25, and 37 and in the light of confidentiality, I consider that it would have been difficult for the HOPO to obtain from the Family Court material regarding the state of the family proceedings and/or evidence in them. The appellant should have been directed to produce the material himself if he wished to rely on it. In the absence of such evidence, I find that the FtT erred in its finding at para 46 that in light of the appellant’s conduct and the NOMS report, it would be antithetical to the child’s best interests for the appellant to have contact with her; and that his prospects of obtaining direct contact are not realistic in view of his offending and behaviour.

9. For these reasons the FtT’s decision cannot stand. It is set aside in order to be remade.

10. The FtT’s finding that the appellant has been in the UK since 1995 and has exceeded a period of 10 years, taking into account the periods of time he has spent in custody, is to stand.”

5. The appeal came before Mitting J sitting as a Judge of the Upper Tribunal and Upper Tribunal Judge Freeman on 17 December 2013. They were not able to determine the appeal on that occasion. No doubt they had in mind the decision of

this Tribunal in **Essa (EEA: rehabilitation/integration) [2013] UKUT 00316 (IAC)** when Judge Freeman gave directions. He said:

“The issues to be decided are:

1. has the appellant acquired the right of permanent residence under reg. 21(2) of the Immigration (European Economic Area) Regulations 2006?
- 2 has the appellant acquired and retained the right of enhanced protection under reg. 21(4)(a)?
3. if the answer to (1) is yes, but the answer to (2) is no, have serious grounds of public security been established?
4. if the answer to 2. is yes, have imperative grounds of public security been established?
5. in either event, having regard to the factors identified in reg. 21(6), and the best interests of the appellant’s daughter, are the requirements of reg. 21(5) satisfied?”

6. Since then there has been clarification from the European Court of Justice in **Onuekwere v Secretary of State for the Home Department (Directive 2004/38/EC)** Case C-378/12 and **Secretary of State for the Home Department v M.G. (Directive 2004/38/EC)** Case C-400/12 which were each promulgated on 16 January 2014. This jurisprudence clarifies our task but gives no reason for us to change the approach required by Judge Freeman’s directions.
7. The decision in **Case C-145/09 Tsakouridis** [2010] ECR I-11979 gives reasons for the European Court of Justice to rule that protection based on 10 years residence, unlike protection based on 5 years residence, can be lost by reason of subsequent imprisonment. Although the case was mentioned in Judge Eshun’s decision we see no need to consider it further now.
8. Following **Onuekwere** it is, we find, beyond doubt that periods of imprisonment served as a punishment by order of the criminal courts *do not count* towards five years residence and *do interrupt* a period of continuous residence (see paragraph 33(1) and (2)). However, following **M.G.** an EEA national who has resided in the United Kingdom for many years, even if that residence is not continuous because it has been interrupted by periods of imprisonment, cannot be deported without regard to his integration in the United Kingdom. At paragraph 39(2) the court said:

Article 28(3)(a) of Directive 2004/38 must be interpreted as meaning that a period of imprisonment is, in principle, capable both of interrupting the continuity of the period of residence for the purposes of that provision and of affecting the decision regarding the grant of the enhanced protection provided for there under, even where the person concerned resided in the host Member State for the 10 years prior to imprisonment. However, the fact that that person resided in the host Member State for the 10 years prior to imprisonment may be taken into consideration as part of the overall assessment required in order to determine whether the integrating links previously forged with the host Member State have been broken.”

9. We set out below the relevant parts of the regulation 21 of the Immigration (European Economic Area) Regulations 2006.

“5) Where a relevant decision is taken on grounds of public policy or public security it shall, in addition to complying with the preceding paragraphs of this regulation, be taken in accordance with the following principles-

(a) the decision must comply with the principle of proportionality

...

6) Before taking a relevant decision on the grounds of public policy or public security in relation to a person who is resident in the United Kingdom the decision maker must take account of considerations such as age, state of health, family and economic situation of the person, the person's length of residence in the United Kingdom, the person's social and cultural integration into the United Kingdom and the extent of the links with his country of origin."

10. It follows (and the plain meaning of the Regulations requires) that although imprisonment will in principle interrupt a period of 10 years continuous residence a person who has more than 10 years residence in the United Kingdom cannot be deported without full consideration of his circumstances and in particular if he has broken the "integrating links previously forged" in the United Kingdom, and if his removal is proportionate.
11. We have the benefit of the bundle and a skeleton argument prepared for the hearing before us by Miss Nnamani and a bundle prepared for an earlier hearing.
12. Before us it is for the respondent to show that her decision is justified under the rules and on human rights grounds. Facts relied upon must be proved on the balance of probabilities.
13. For reasons that we explain below we are satisfied that the appellant has acquired the right of permanent residence under reg. 21(2) of the Immigration (European Economic Area) Regulations but not a right to enhanced protection under reg. 21(4)(a) and that serious grounds of public security have been established. In short he resided in the United Kingdom continuously as the family member of an EEA national exercising treaty rights from sometime in 1995 when his father arrived and started work. However he has not earned the enhanced protection arising from ten years continuous residence because his residence was interrupted when he was sent to custody in 2001 and has been further interrupted for the same reason many times since.
14. We heard oral evidence from the appellant and his parents and we read supporting statements from friends and other family members. We see no point in setting out the evidence in detail as very little was controversial. We also received evidence after the hearing (as we had arranged to do) supporting the appellant's father's claim to have worked for many years in the United Kingdom.
15. We were particularly assisted by a letter served shortly after the hearing, dated 14 September 2013 from HM Revenue and Customs to the appellant's father and referring to his having "19 qualifying years of NICs". This is independent evidence that enhances the oral testimony claiming the appellant's father has a long history of working in the United Kingdom. There is also a letter from HM Revenue and Customs confirming that the appellant's father paid national insurance in the tax year 1995/96. This supports his oral evidence that he got work soon after he arrived in the United Kingdom.
16. We acknowledge that the supporting letters asserted that the appellant was settled in the United Kingdom.

17. Although we made no findings without first considering the evidence as a whole it is convenient to set out at the beginning findings that were easy to make on the evidence.
18. We accept that the appellant was born in Italy in 1982 and came to live in the United Kingdom in 1984. In about 1986 the family returned to Italy and stayed there until moving to the United States of America in 1993 for about 18 months when the family returned to the United Kingdom in 1995. The appellant's father arrived in the United Kingdom shortly after the appellant and his mother but his father started to work soon after his arrival, still in 1995 and has been working (or, for short periods, looking for work) in the United Kingdom since then.
19. The appellant was first sent to custody in 2001. By then he had lived in the United Kingdom lawfully as the dependant child of an EEA national who had been exercising treaty rights for more than 5 years and so the appellant has obtained a permanent right of residence in the United Kingdom under regulation 15(1)(d) of the Immigration (European Economic Area) Regulations 2006. He cannot be removed "except on serious grounds of public policy or public security" (Regulation 21(iii) of the Immigration (European Economic Area) Regulations 2006).
20. There is documentary evidence showing that the appellant has been very obese and that his physical maturity was delayed a little. Whether or not his troubled adolescence contributed to his offending we do not know but the evidence was in the papers before us and we have read it. It is not, and was not said to be, any kind of excuse for his criminal offences.
21. His first recorded conviction was in 1998 for offences of dishonesty for which he was fined. He had been in trouble with the police before then but he was not prosecuted.
22. He first lost his liberty in April 2001 as a consequence of his being convicted after a trial at the Crown Court for "shop lifting". He was sentenced to further terms of custody in May, August and October 2001 and in July and August 2002. He was sentenced to short periods of imprisonment in November 2002 and February 2003 and to two years imprisonment in December 2004 for conspiracy to steal. In September 2005 he was sentenced to periods of imprisonment for an offence committed whilst on licence from prison and in February 2006 he was sentenced to two months imprisonment for an offence of dishonesty. In August 2006 he was sentenced to a further term of imprisonment for several offences. It seems that he had to serve a total of 11 months. On October 2007 he was sentenced to eight weeks imprisonment at the Magistrates' Court. In February 2008 he was sentenced to eighteen months imprisonment for possessing cocaine with intent to supply. He was next before the courts in May 2011 when he was sentenced to 20 weeks imprisonment for residential burglary. On 6 February 2012 he was remanded in custody having been caught driving whilst disqualified and on 27 February 2012 he was made the subject of a suspended sentence of imprisonment for the offence of driving whilst disqualified but he did not keep to the terms of his order. He was most recently in trouble in July 2012 when he was sentenced to a total of two years imprisonment for offence including two counts of residential burglary.

23. We cannot deduce from his record just how much time he has spent in custody. Some of the sentences were imposed when he was in custody and the records do not show how much time was served. Nevertheless, without counting concurrent sentences he appears to have been ordered to spend nearly 7 years in prison. He was clearly before the courts at least once in every year from 2001 to February 2008 when he was sent to prison for 18 months. Even so, he pleaded guilty to an offence of burglary of a dwelling on 4 March 2010, just over two years after the start of his 18 months sentence.
24. We accept that he has not been convicted of any offence since July 2012 but his behaviour is under such intense scrutiny that this is not good evidence of a change of attitude and even whilst in prison police were involved because of approaches he made to his former partner.
25. This summary does not give details of non-custodial sentences but other sentences have been imposed. He has, at different times, been the subject of a probation order, a community rehabilitation order and an order requiring him to attend an enhanced thinking skills programme but these did not bring about a fundamental, or any, improvement in the appellant's behaviour.
26. We accept that the appellant has passed GCSE examinations and has obtained NVQs in industrial cleaning. He has secured a variety of jobs, mainly in the catering industry. Not all of his jobs have been known to HM Revenue and Customs.
27. We accept too that the appellant lived with his "fiancée/partner" at various addresses in Sussex, Hampshire and Surrey from 2008, and with their daughter who was born on 28 May 2009, until about the time that he was arrested in 2012 although we also find that their relationship had deteriorated in the months before his arrest and he was in prison for a time after their child was born and before they separated.
28. We considered the appellant's relationship with his former partner and child below.
29. He wrote to her in prison letters that he described as "emotional" and she described as "threatening". Some, perhaps all, of these letters are in the bundle before us. Both descriptions are justified but incomplete. Some of the things the appellant wrote were quite benign and others suggested a genuine concern for his daughter but other parts were threatening. The appellant was subject to a non molestation order made at Guilford County Court on 27 February 2013 and the police asked the prison authorities to prevent the appellant making further contact with his former partner by letter. She did nothing to support this appeal and the appellant has had no contact with his daughter since March 2012.
30. The appellant said that for a time contact was facilitated by his former partner's father, Mr B. He insisted that his relationship with his partner was subsisting until after his arrest and in a statement he described his relationship with his daughter as "fully subsisting". However there is also a statement made to the police by Mr B, included in the respondent's bundle. It is dated 5 March 2014 but as it is appended to an index dated 19 February 2013 we are not confident that the date is correct. In it Mr B asserts that he has "never facilitated any contact

between the appellant and S". He said that he had sent "M---" some money when he was in prison because he was sorry for him having no money for toiletries and was "aghast" when that money appeared to have been used to finance telephone calls to his daughter. He did not want there to be contact between the appellant and the appellant's daughter.

31. We have not been able to resolve the conflict between the appellant's claim that his former partner's father facilitated contact for a time and Mr B's evidence that he never did such a thing. Perhaps there was some assistance for a short time that Mr B has forgotten and the appellant has exaggerated. However it is quite clear that Mr B is not offering to assist any future contact.
32. Mr B's statement also said that his daughter has now married and the appellant's daughter is happy in her new family.
33. We find that there is no prospect of the appellant being reconciled with his former partner.
34. The appellant asserted a right to maintain parental contact with his daughter and said it would be in her best interests to have contact with him. He has commenced proceedings to try to achieve this end.
35. The appellant's daughter, herein identified as "S", was born in May 2009. The appellant says he has not seen her since March 2012. He served a prison sentence of 20 weeks in 2011. He was remanded in custody in February 2012. Whilst he may have had some happy times with his daughter, and there is certainly no evidence that he was overtly unkind to her, and he has expressed great interest in the child there is nothing to suggest that he has ever been a stable and important influence in her life. It is unlikely that she can now remember much about him.
36. We are obliged to consider the best interests of his daughter. In the ordinary course of events it must be the case that it would be in her best interests to have a meaningful relationship with both her parents. The ideal arrangement is that she lives with both parents together in a committed and contented relationship. She has been deprived of that benefit because they were unable to live together. She is wholly innocent of her father's many deficiencies. If this had been a case where there was an established meaningful relationship between the little girl and her father we would have had to give considerable weight to her right to nurture and develop that relationship but this is not such a case.
37. A small child in the care of its mother can only have a meaningful relationship with the father if the mother is prepared to cooperate to that end and there is no reason to think that she is. We recognise that men whose conduct is deplorable in many respects can, sometimes, still have something useful to offer their own children and that such a father's relationship with his child is still potentially valuable. This is not such a case, at least not presently. It is not a close relationship. The appellant's relationship with his daughter was frustrated by reason of his being justly imprisoned because of his own misconduct. It has not developed further because his daughter's mother does not want a closer relationship to grow.
38. We are aware that the appellant has made an application to the Family Court and we do not want to frustrate or presumptuously predict that court's work. In

some circumstances (for example where a mother appears to be frustrating the continuation of established contact) there are excellent reasons to delay a deportation decision until the family courts have indicated how the best interests of children can be advanced. This is not such a case. The appellant has little chance of playing a significant part in the child's life for the foreseeable future. We see no point in delaying the appellant's removal while his child's best interests, and how they can be advanced, are considered by family courts.

39. We find that however strong his feelings might be, in truth the appellant does not have a strong relationship with his daughter. Further, his selfish and unpleasant letters to his former partner and the non-molestation order show that however genuine he may be in his feelings towards his daughter he does not have any insight that would enable him to build a relationship with his former partner that would make meaningful contact with his daughter practicable.
40. For our purposes we find that the appellant's daughter's best interests are in her staying with her mother and not seeing her father in the immediate future. The appellant's removal would not stop his making occasional contact in writing and of more meaningful contact developing if that was best for the child. Her best interests do not now require him to be in the United Kingdom.
41. We accept that the appellant has frequent contact with and support from his family in Shrewsbury and that his father is likely to be able to help him find work. However relationships between adults other than life partners, are not usually weighty in an article 8 balancing exercise and there is nothing to suggest that they should have great weight here.
42. We also accept that the appellant has often been employed in the catering industry although not all of his jobs have been known to HMR&C.
43. The appellant insisted that the prospect of deportation had been "extremely frightening" and he realised how much he had to lose, including contact with his daughter, his parents and his brother and he was "resolved not to reoffend".
44. Both of his parents said that they had detected a change in his attitude since he was faced with the prospect of deportation but were not able to point to much in support these opinions. On this point we found their evidence honest but their opinions were unjustified.
45. It was pointed out to the appellant that in 2007 after he had been in trouble he received a letter from the Secretary of State warning him that he could be deported. He was asked why that did not have a salutary effect on him. He indicated that he did not realise it was a serious threat. He thought that he was a dual national. He was asked directly, and perfectly fairly, why the Tribunal should believe his claim to have changed. He referred to the "hell" of not seeing his daughter.
46. We accept that the appellant's mother is a British national and his father an Italian national and his mother did not realise that in order for him to obtain British nationality she need to register him as a British national. He could not obtain British nationality when he realised that he was not a British national because he had committed criminal offences.

47. According to the National Offender Manager Service (NOMS) report (page 7) the appellant described himself as a career criminal. He admitted to a certain amount of drug dealing but denied any personal use of cocaine. The likelihood of reoffending was assessed to be 90% in the first two years after release. We note that this is an exceptionally high figure and although the NOMS report is perhaps not as accurate a predictor of the likelihood of reoffending as the use of a precise percentage might suggest the report clearly shows that when the report was prepared the appellant had shown little remorse or little sign of rebuilding his life and living down his criminal past. In contrast he seemed resigned to getting into further trouble.
48. The report was requested on 14 December 2012 and served on 1 July 2013. It says on page 9 “Full review – 10/09/ 2012 Fast review due to change in risk of serious harm to partner and children 24/04/2013”. Whilst it is probably right that the opinions in the report are not based on interviews conducted after he received the most recent notice of the intention to deport him they were based on his conduct in prison and therefore after the prospect of deportation and on different occasions the implementation of a suspended prison sentence, had not stopped him reoffending.
49. We find it relevant that the appellant has offered no explanation for his offending. We find the appellant’s criminal record very depressing. He cannot be presented as a young man whose criminality was confined to his having trouble establishing himself in adult life. Rather he is a person who has repeatedly committed offences from a young age and the offences have tended to become more rather than less serious with the passage of time. He has shown himself to be dishonest and on occasions incapable of accepting his own guilt. He has also been thoroughly irresponsible in his dealings with the courts and contemptuous of the need to obey the law.
50. We know the appellant says that he has had a change of heart. We know that this claim has been supported by his parents whom we find to be honest people, if not objective. However we cannot see anything in the evidence that gives us any good reason to accept this assurance even if the appellant means it when he says it.
51. We appreciate that the appellant claims to fear losing contact with his daughter but the fact is he has already lost contact with his daughter. That may be a terrible blow to him but it is what has happened. It is a matter of record that he was warned on an earlier occasion about his behaviour by the Secretary of State and that he risked deportation. He did not believe the warning given. Only an arrogant disregard for the law could have caused him to ignore this warning. He certainly cannot claim to have been unaware of the potential consequences of further offending and it did not stop him.
52. Sometimes a person commits criminal offences, perhaps particularly of the kind of dishonest offence this appellant has committed, to satisfy a drug or other addiction. Without it in any way being an excuse, it is possible to see in such circumstances a reason for a person succumbing to the temptation to break the law. Such a person who faces up to his problems and resolves to put them behind him can, sometimes, be believed when he says that he has turned over a new leaf.

Such claims will be looked at with great care, not to say cynicism but can sometimes be persuasive. This appellant has not identified himself as such a person.

53. We have reminded ourselves that even young men with an appalling criminal history do, sometimes, start to live industriously and live down their past when they meet a suitable partner. This appellant's criminal conduct has escalated since he became a father.
54. This appellant has given no explanation at all for his criminal behaviour. Neither has he advanced any plausible reason for us to find that he will not continue to commit criminal offences. He just does not like the consequences of being caught. The consequences of being caught have already included prison sentences and, whilst we recognise there are elements of a deportation order that are in some ways more onerous than a prison sentence, he is not a man who can be believed when he says that adverse consequences have frightened him into proper behaviour.
55. His convictions for failing to answer bail and driving whilst disqualified show an inability, or disinclination, to exercise elementary self discipline.
56. We do not believe him when he says that he has changed his ways and we cannot accept his parents' assurance to the contrary.
57. We find that if he remains in the United Kingdom he is likely to go back to his dishonest and other reprehensible behaviour. His past crimes are not the most serious but they are far from minor. They include disturbing public order, possessing drugs with intent to supply and dwelling house burglary. We remind ourselves that his previous criminal convictions do not of themselves justify a decision to remove him under the regulations. Rather his personal conduct must represent a "genuine, present and sufficiently serious threat affecting one of the fundamental interests of society".
58. We are satisfied that his propensity to re-offend does amount to serious grounds of public policy or public security that justify his exclusion.
59. The supporting letters emphasis how, in the opinion of the writers, the appellant is British in all but name and should be allowed to remain in the United Kingdom close to his British relatives. The problem with this contention is that he is not British. Rather his presence in the United Kingdom is a danger to the security of British people and he does not become entitled to be treated as if he has British nationality by reason of a long residence during which he has repeatedly committed crimes. Many of the points made in the letters about his ties to the United Kingdom echo the rules and particularly the requirements under regulation 21 to take account of a variety of personal circumstances. They may be excellent reasons for not seeking to deport the appellant the first time that he got into trouble but that is not what has happened here.
60. As is set out above, we are particularly required under the rules to consider the appellant's degree of integration into British society. Our understanding of "integration" is enhanced by the decision of the European Court of Justice in **MG**. It would be quite wrong to remove lightly a person who has lived in an EEA state for ten years or more even if he had not lived in a way that has entitled him to

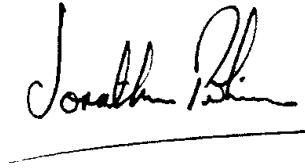
enhanced protection. However the regulations require us to consider, inter alia, the degree of *integration* rather than mere length of residence. This appellant has lived in the United Kingdom for nearly all his life as if it were his own country. He has been educated there. He has worked there. We accept that he does have a history of employment, albeit interrupted by periods of detention.

61. The problem is that although he has made the United Kingdom his home, his behaviour is that of a person who is ill at ease in the United Kingdom rather than integrated into it. He is a persistent criminal and a dishonest and irresponsible man. He has not integrated into the United Kingdom. He has simply lived there for most of his life. This is significant. If the directive intended a lesser test, such as extended residence, that is what the directive would have said.
62. We are required to focus on integration and the evidence is that the appellant has not integrated in any meaningful way.
63. We have also reflected on the prospects of his being rehabilitated. There is nothing before us that persuades us that he is a reformed character. He has squandered the opportunities given him by the courts to improve his behaviour. Removing him will not interrupt a rehabilitation process. It is just possible that the jolt of deportation and its associated new beginning in Italy will encourage him to reorganise his life.
64. The appellant said little about his contacts in Italy but he has made many visits to the country and has relatives there who can reasonably be expected to offer some help in establishing himself. He said that he spoke some Italian and, as a cook who has learned from his Italian father, he has transferable skills. He can establish himself in Italy.
65. We have asked ourselves if removal would contravene the United Kingdom's obligations under the European Convention and particularly under article 8. The appellant can only succeed on these grounds in exceptional circumstances and everything that has to be considered under article 8 has already been considered. Plainly removal would interfere with his private and family life and indeed with the private and family life of his child. However in all the circumstances we find his removal proportionate. He is a mature man. He has no partner and no meaningful relationship with his child. The interference with his private and family life is proportionate to the proper purpose of maintaining law and order.
66. Upper Tribunal Judge Eshun has already ruled that the First-tier Tribunal has erred in law and directed that its decision is set aside. Her reasons are given above. The appellant has acquired the right to permanent residence under regulation 21(2) of the Immigration (European Economic Area) Regulations 2006. He has not acquired the right to enhanced protection. His propensity to reoffend does establish serious grounds of public security so that his removal is justified. Before deciding the appeal we have taken account of all his personal circumstances including those identified in the regulations and particularly his degree of integration into the United Kingdom. We have reminded ourselves of the need for proportionality. We dismiss the appeal under the rules. Notwithstanding that his removal would interfere with his and other peoples' private and family life his circumstances do not create an exception within the

rules and his removal is proportionate to the proper purpose of maintaining order and preventing crime.

67. In the circumstances, we dismiss this appeal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

A handwritten signature in black ink, appearing to read "Jonathan Perkins", written over a horizontal line.

Dated 9 April 2014