



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

Appeal Number: DA/01631/2013

**THE IMMIGRATION ACTS**

**Heard at The Royal Courts of Justice**

**On 7 April 2014**

**Determination**

**Promulgated**

**On 8 August 2014**

**Before**

**UPPER TRIBUNAL JUDGE CRAIG**

**Between**

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

Appellant

**and**

**JOAO NELIO RIBEIRO CATANHO**

Respondent

**Representation:**

For the Appellant (Secretary of State): Mr S Walker, Home Office Presenting Officer

For the Respondent: No legal representation

**DETERMINATION AND REASONS**

1. This is the Secretary of State's appeal against a decision of a panel of the First-tier Tribunal (First-tier Tribunal Judge Metzger and Mr J H Eames, non-

legal member), which allowed Mr Catanho's appeal against her decision to deport him. For ease of reference, I shall throughout this determination refer to the Secretary of State, who was the original respondent, as "the Secretary of State" and to Mr Catanho, who was the original appellant, as "the claimant".

2. The claimant, who was born on 8 March 1977, is a citizen of Portugal. As recorded by the panel at paragraph 2 of its determination, the claimant appears to have claimed to have arrived in this country variously in 1994, 1996/7 or 1999. Other than by virtue of what he says, there is no documentary (or indeed any other) evidence to show when in fact he did arrive, other than it is clear that he was in this country by 2008.
3. The reason why it can be said with certainty that he was in this country in 2008 is because on 3 June 2008 he committed an offence of theft. He was subsequently sentenced for that offence on 4 July 2008 when he was given a twelve months conditional discharge.
4. Thereafter, the claimant committed numerous offences. On 10 March 2009 he was sentenced at Kingston-upon-Thames Crown Court for robbery and breach of his previous conditional discharge, to twelve months' imprisonment. Then on 9 April 2010, which must have been within only months after his release, he was sentenced at Hounslow Magistrates Court for failing to surrender to custody at an appointed time. Then three days later he was sentenced at that court for theft.
5. On 4 November 2010 the claimant was sentenced, again at Hounslow Magistrates Court, on two counts of theft and again at that court on 12 November 2010, he was sentenced for destroying or damaging property. He was conditionally discharged for a year at that time.
6. Then on 19 April 2011, again at Hounslow Magistrates Court, he was fined for using disorderly behaviour or threatening/abusive/insulting words likely to cause harassment, alarm or distress and on 16 August 2011 he was sentenced at Uxbridge Magistrates' Court on two counts of theft. Again, he was dealt with other than by means of a custodial sentence.
7. On 25 August 2011, at Uxbridge Magistrates' Court, the claimant was sentenced to a suspended term of imprisonment of twelve weeks in respect of two further counts of theft. He was also required to do 100 hours unpaid work and made subject to a curfew requirement.
8. On 1 November 2011, the claimant was sentenced at Hounslow Magistrates Court for failing to comply with the community requirements of that suspended sentence order, and was sentenced to eleven weeks' imprisonment, which is said to have been the unserved remainder of the previous suspended sentence.
9. Then on 18 February 2012 the claimant was sentenced at West London Magistrates Court to two further counts of theft (to one day's detention)

and on 10 March 2012 he was sentenced at West London Magistrates Court for yet another count of theft, for which he was conditionally discharged for twelve months.

10. Then on 16 March 2012 the claimant was sentenced at West London Magistrates Court for theft, again to one day's detention.
11. On 13 April 2012 the claimant was sentenced at West London Magistrates Court for using disorderly behaviour again and fined. Then on 26 July 2012 he was sentenced at West London Magistrates Court for failing to attend or remain for the duration of a follow up assessment following a test for Class A drugs and theft. Again he was dealt with leniently by being sentenced to one day's detention only.
12. Then, on 8 January 2013, the claimant was sentenced at Isleworth Crown Court to two months' imprisonment for destroying property.
13. Then, on 22 November 2012, the claimant was convicted at Isleworth Crown Court of robbery, for which he was sentenced on 13 March 2013 to sixteen months' imprisonment. It appears from the judge's sentencing remarks that the claimant pleaded guilty "at a very late stage". The claimant did not appeal against the sentence and he has remained in custody since then.
14. Accordingly, it appears that from the time the claimant's presence in this country can be confirmed until now, he has never remained outside custody for any length of time without continuing to commit offences. According to the NOMS assessment, to which reference will be made below, the claimant has fifteen convictions recorded against him for 24 separate offences. In the decision letter, at paragraph 36, the respondent calculates that between 4 July 2008 and 30 March 2013, the claimant had in fact received a total of seventeen convictions for 26 offences. Whichever is correct, it is certainly a very large number, and the decision letter, at paragraph 36, continues as follows:

"Your conviction history clearly indicates an anti-social attitude towards the public and community. You have shown no remorse for your behaviour and you appear to have given no consideration to the time and public funds spent each time you offend - from the resources spent by the police investigating your crimes to your victims spending time in reporting the offences and in addition, the high costs involved in taking you to court."
15. At paragraph 37 of the decision letter it is noted that the claimant's convictions, "include sixteen theft offences, which were committed between 3 June 2008 and 31 August 2012", and that these convictions "strongly indicated an established pattern of repeated acquisitive offending".
16. The Secretary of State continues by asserting that

“The fact that you have continued to offend, without being deterred by previous convictions or sentences, indicates that you have a lack of regard for the law, a lack of remorse for your offending behaviour, and a lack of understanding of the negative impact your offending behaviour has on others.”

17. The Secretary of State also considers that there was an escalation in seriousness of the offences committed and also (at paragraph 39) that “the nature of your offences suggests that you are unable to support yourself in the United Kingdom without resorting to criminal activities”.
18. In the decision letter, the Secretary of State considered (at paragraph 30) that the claimant had failed to establish that he had been exercising treaty rights in this country for a continuous period of at least five years, and so had not acquired the right of permanent residence in this country. On that basis, the Secretary of State considered that deportation was warranted on grounds of public policy or public security.
19. The Secretary of State had in mind the relevant Regulations contained within the Immigration (European Economic Area) Regulations 2006, the relevant Regulations being as follows:

**“Permanent right of residence**

15 (1) The following person shall acquire the right to reside in the United Kingdom permanently

- (a) an EEA national who has resided in the United Kingdom in accordance with these Regulations for a continuous period of five years;

...

**Exclusion and removal from the United Kingdom**

...

19 (3) Subject to paragraphs (4) and (5) [not relevant to this appeal] an EEA national who has entered the United Kingdom ... may be removed if –

- (a) that person does not have or ceases to have a right to reside under these Regulations; or
- (b) the Secretary of State has decided that the person’s removal is justified on grounds of public policy, public security or public health in accordance with Regulation 21 ...

**Decisions taken on public policy, public security and public health grounds**

- 21-(1) In this Regulation a “relevant decision” means an EEA decision taken on the grounds of public policy, public security or public health.
- (2) A relevant decision may not be taken to serve economic ends.
- (3) A relevant decision may not be taken in respect of a person with a permanent right of residence under Regulation 15 except on serious grounds of public policy or public security.
- (4) A relevant decision may not be taken except on imperative grounds of public security in respect of an EEA national who -
- (a) has resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision; ...
- (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;
- (b) the decision must be based exclusively on the personal conduct of the person concerned;
- (c) the personal conduct of the person concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society;
- (d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;
- (e) a person’s previous criminal convictions do not in themselves justify the decision.
- (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 the 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 person's links with his country of origin ...".

20. The Secretary of State had in mind the provisions of paragraph 6 of Schedule 4 to the Regulations whereby the time spent in accordance with the Regulations, prior to the coming into effect of these Regulations, would be taken into account. However, as is clear from current jurisprudence, time spent in custody breaks the continuous period of residence so that in order to acquire permanent residence, it is necessary for an applicant to have been present in this country both exercising treaty rights, and not being in custody, for a continuous period of five years.
21. Although it is the claimant's case that he has been resident in this country since (variously) sometime between 1994 and 1999, this was not accepted by the Secretary of State, who stated as follows at paragraphs 29 and 30 of her decision letter, which is dated 31 May 2013:

**“Residence - permanent right to reside**

29. As stated above, you have failed to provide details of when you first entered the UK. However, it is noted that you have previously claimed to have been residing in the UK since the age of 17, which would have been since approximately 1994. You have also more recently claimed to have been residing in the UK for fourteen years, which would have been since approximately 1999.
  30. In any event, you have failed to provide any evidence of your date of entry to the UK, of your length of continuous residence in the UK, or that you have been legitimately working, studying, or otherwise exercising your Treaty Rights in the UK for a continuous period of at least five years. In light of the information available, it is considered that you have not acquired the right of permanent residence in the United Kingdom.”
22. Accordingly consideration was given as to whether or not the claimant's deportation “is warranted on grounds of public policy or public security” (at paragraph 31 of the decision letter) in accordance with the principles set out in Regulation 21(5). Having considered the claimant's criminal history and the assessment of risk of future offending set out in the NOMS 1 report, the Secretary of State concluded (at paragraph 44) that “all the available evidence indicates that you have a propensity to re-offend and that you represent a genuine, present and sufficiently serious threat to the public to justify your deportation on grounds of public policy”.
  23. At paragraph 45, the reasons for deporting this claimant were put even higher, as follows:

“45. Given the nature of the offence you have committed [a robbery] and the threat that you pose to society, it is considered that, even if you have permanent residence as a result of five years continuous residence in the United Kingdom, or for a continuous period of at least ten years, the requirement for serious grounds of public policy or imperative grounds of public security respectively, would have been satisfied.”

24. The claimant appealed against this decision and as noted above his appeal came before a panel of the First-tier Tribunal, whose composition has been set out, and in a decision promulgated on 11 February 2014 following a hearing at Kingston Crown Court on 29 January 2014, the panel allowed his appeal.

25. It is fair to say that the panel’s determination is very short, being about three pages, excluding the heading, and being thirteen paragraphs in all. The findings are set out at paragraphs 11 and 12 as follows:

“11. The appellant had not documentary evidence to support the period of time he had been in the United Kingdom or the periods of time he had worked. However, there was some support for his contentions, albeit not independent from the NOMS report, which made reference to the appellant having informed the probation officer that he had last worked in 2007 and previously he had worked at Heathrow Airport doing deliveries and as a porter at Westminster Hospital where he worked for some seven years. The appellant maintained that he had been married and the marriage ended in 2008 and that he had a wife and two daughters in the United Kingdom. We found the appellant to be credible, both in relation to the period of time he had been in the United Kingdom which was at least since 1999 if not earlier. Although there were some inconsistencies as to the precise date, on any interpretation of the appellant's evidence, he has been in the United Kingdom for a continuous period of at least ten years, allowing for the periods of time he had spent in custody. We also accept, even though there was no documentary evidence to support it, that the appellant had been working for substantial periods prior to 2007 after which he first became involved in alcohol, drugs and offending.

12. We note the judge’s sentencing remarks which accept that the offence, although serious, was not at the most serious end because there was no weapon used and no injury was caused to the victim, although we do not minimise the seriousness of this offence, or indeed the history of the appellant's offending. However, as we find to the relevant standard that the appellant has been in continuous residence in the United Kingdom for a period in excess of ten years, and bearing in mind the respondent's concession in this regard, if the appellant is able to establish that fact, we find that the respondent is unable to

establish to the relevant standard that the deportation decision can properly be maintained as the respondent is either able to establish that the appellant has a permanent right of residence under Regulation 15 should be removed under Regulation 21(4) and (5) of the 2006 Regulations, namely that the respondent cannot show imperative grounds of public security in respect of an EEA national who has resided in the United Kingdom for a continuous period of at least ten years and nor does the appellant represent a genuine present and sufficiently serious threat affecting one of the fundamental interests of society.”

26. Although the syntax in parts of paragraph 12 is confusing, it seems that the panel was trying to say that because the claimant had acquired the right of permanent residence, or had even been in the UK for a continuous period of 10 years, in order to justify his removal the Secretary of State needed to establish that the requirements of paragraph 21 (3) or even (4) of the Regulations was satisfied, and could not do so.
27. The Secretary of State has appealed against this decision and her grounds are set out succinctly within the grounds of appeal. It is submitted that the panel had failed to give reasons or adequate reasons for its findings. In particular, it is submitted that the panel failed to provide adequate reasons for its findings at paragraph 11 that the claimant had resided in the UK for a continuous period of at least ten years and had been exercising treaty rights throughout this period. It is noted that the panel itself had found that there was no documentary evidence to substantiate the claimant’s claims in this regard and that the only evidence in support of this was oral testimony he had given to his Offender Manager “which was without any independent evidence to support it”. Further, even if it was accepted that the claimant had resided in this country for the length of time claimed, there was no independent documentary evidence that he had been exercising his treaty rights in accordance with the EEA Regulations. Furthermore, the fact that the claimant claimed to have been paid cash in hand suggested that any employment he might have had in this country “was merely sporadic, temporary and unlawful”.
28. In these circumstances, it was the Secretary of State's case that the claimant had not provided sufficient evidence to establish that he had resided in the UK lawfully in accordance with the Regulations and so any residence he might have had in this country “cannot be relied upon when assessing his continuous residence”.
29. With regard to the risk posed by the claimant, it was submitted that the panel did not address his behaviour, drug or alcohol habit and had simply “failed to consider his propensity to re-offend and escalation in seriousness of offences” such that “even if it is accepted that the [claimant] can only be deported under either grounds that he represents a genuine, present and sufficiently serious threat [on] grounds of public



policy or public security” he was still subject to deportation under these Regulations.

30. With regard to the assertion by the claimant that he had children in the UK, the claimant had produced no evidence of this, no evidence that they currently resided in the UK and no evidence that he had any contact with them.
31. Permission to appeal was granted by First-tier Tribunal Judge Simpson, who set out her reasons as follows:

“ ...

2. The respondent argues that:

- (a) The Tribunal failed to give adequate reasons for finding that the [claimant] had resided in the United Kingdom for a continuous period of at least ten years or that he had been exercising his treaty rights throughout his residence;
- (b) The [claimant] had failed to show that his stay in the United Kingdom was lawful prior to Schedule 4 of the 2006 EEA Regulations;
- (c) Failed to consider the [claimant’s] propensity to reoffend;
- (d) The [claimant] had failed to provide any evidence that he has children in the United Kingdom or that he has contact with them.

3. As to 2(b), as Portugal joined the EEA on 1 January 1986, the [claimant’s] stay in the United Kingdom must always have been lawful under the 2006 Regulations. As to ground (a) however, the [claimant’s] evidence was that he had worked at West Middlesex Hospital between 1999 and 2003/04 as a porter and had also worked at Citro Star in about 2006/07. While the Tribunal was entitled to accept that he had resided in the United Kingdom for more than ten years, his oral evidence was that he did not claim benefit between jobs and thus he may not have been a qualified person throughout his residence. This is material as he may not be entitled to a permanent right [of] residence. ...”

## **The Hearing**

32. I first heard submissions from Mr Walker on behalf of the Secretary of State and by the claimant in person with regard to whether or not there was an error of law in the panel’s determination such that it was necessary to set aside its decision and remake it. Having found that there was an

error of law, for reasons which I will give below, I then heard evidence from the claimant, who was cross-examined. I then heard further submissions on behalf of both parties, and reserved my decision.

33. I recorded the submissions and the evidence I heard contemporaneously in the Record of Proceedings, and shall not set out below everything which was said to me during the course of the hearing, but only such of the evidence and submission as is necessary for the purposes of this determination. I have, however, had regard to everything which was said to me as well as to all the documents which are contained within the file.

### **Submissions as to Error of Law**

34. On behalf of the Secretary of State, Mr Walker reminded the Tribunal that it was the claimant's evidence that he had been working between 1999 and some time in 2003/4 as a porter at West Middlesex Hospital, and before then had worked at Heathrow Airport. However, the panel had given no consideration to the claimant's failure to provide any tax and national insurance documentation for either period, which must be relevant because in either of these employments these documents would have been available.
35. With regard to the claimant's claim to have a daughter born in this country, again this could have been supported by documentary evidence such as a birth certificate, but there was no evidence with regard to this either.
36. The panel should not have found that he had been here prior to 2006 exercising his treaty rights.
37. With regard to the finding that this claimant had been resident for more than ten years continuously, there was no reasoning to support the proposition that any such residence was "lawful", which in the context of this appeal meant in accordance with the Regulations.
38. With regard to the risk posed by the claimant, the panel had not considered the evidence that he had not addressed his drug problem. It had made no finding on this point.
39. The claimant then told the Tribunal that he had come to this country in 1997 with his ex-wife and daughter who was now 19. He had made a few mistakes after he had lost his brother eleven years ago and had "started doing drugs and crime". However in "the last couple of years" he had "grown up". He thought he deserved another chance.

### **Reasons for Finding Error of Law**

40. In my judgement the panel's determination is not sustainable. First of all, even though matters of weight were for the panel, it does not appear that the panel gave any weight at all to the fact that other than what the claimant said, there was simply no evidence to support his claim that he had been in this country a long time. As the panel noted, at paragraph 11, there were "some inconsistencies as to the precise date" when the claimant had come to this country; in fact he has never given a consistent account of when it was that he arrived in this country. At paragraph 2 of its determination the panel had noted that he had variously claimed to have arrived "in either 1994, 1996/7 or 1999" but nonetheless stated that "we found the appellant to be credible, both in relation to the period of time he had been in the United Kingdom which was at least since 1999 if not earlier".
41. Given that as the panel acknowledged, there was no documentary evidence to support the length of time he claimed to have been in the United Kingdom or the period of time he had worked and no independent evidence beyond what he had himself stated in his various accounts, and given also that the claimant had given inconsistent accounts, I do not consider the finding that the claimant was "credible" (without even making a finding as to which of his various accounts was accepted) to be adequately reasoned.
42. Further, the panel was, in my judgement, wrong in stating that "on any interpretation of the appellant's evidence, he has been in the United Kingdom for a continuous period of at least ten years, allowing for the periods of time he had spent in custody" because if (as the panel found might be the case) the claimant had not arrived into the UK until some time in 1999, it could not even be said that he had been continuously in the UK for ten years prior to being sent to prison in March 2009. Furthermore, there was simply no proper basis upon which the panel could properly have found that the claimant had been exercising treaty rights consistently during this period. The panel's finding "that the appellant had been working for substantial periods prior to 2007" does not even amount to a finding that he had been exercising treaty rights for a continuous period of at least five years, which would be necessary for the claimant to have acquired any permanent right of residence. In the absence of such a finding, the panel's subsequent finding that the Secretary of State could not justify removal on imperative grounds or even on "serious grounds of public policy or public security" is beside the point. Before these higher tests come into play, it is first necessary for the claimant to establish that he has been exercising treaty rights for the requisite period continuously, which the panel did not find.
43. It follows that the panel's decision will have to be set aside and remade.

### **Further Evidence**

44. The further evidence I heard did not take the claimant's case any further. He told the Tribunal that he had not provided any information as to where his daughters live or how often he saw them because "I have a very bad memory". Although his daughters had come to see him in person, he could not adduce any independent evidence of that, because he had not even known that he was due to be in court on this day. Although he had asked to see a duty solicitor, no one had ever got back to him.
45. In cross-examination he said that his daughters had both visited him in prison two weeks previously.
46. Although he had had wage slips when he worked as a porter in a hospital, he did not have them any more. He had worked for the hospital in his proper identity but was still unable to produce any wage slips. He had been registered with a doctor in Hounslow, but had no independent evidence of this either.
47. With regard to his employment at Heathrow, again, although he would have had wage slips, he did not have them now. When he had moved he could not keep everything so he lost most of his "stuff". He had kept them in the first place in case he needed them in the future. He had used to keep his paperwork together, but when he went to jail he left all his property behind. He had not given this to his daughters because he did not know he was going to jail.
48. When it was put to the claimant that he had been convicted of robbery and so it could not have been a surprise when he received a custodial sentence, he replied that he had been taken into custody when arrested. When he was asked why he had not asked his daughters to collect his property for him, he then said that he had but the friend he was with did not live there any more.
49. The claimant said he did have a Portuguese passport, but he thought he had lost it. He believed his daughter was born in this country on 11 May 1998 at the West Middlesex Hospital, but he had not obtained a birth certificate. However, "I can get it if I have to".
50. With regard to his marriage, he had been married in Portugal in 1996 when he was 17. He had been born, he said, on 8 March 1977.
51. When asked how it was if he was born in 1977, and married in 1996, he was 17, the claimant replied that he might have got the dates wrong, but he was young.
52. In closing submissions, Mr Walker referred to the NOMS 1 report in which originally it had been said that the claimant was a "high" risk of reoffending although he had been marked in the end as "medium". With regard to whether or not the claimant can properly be said, in accordance with the Regulations, to be "integrated" the Tribunal had no evidence of the periods in which the claimant had lived and worked in this country.

There was no documentary evidence regarding his work, which he said was for the health authority and at Heathrow. There was no evidence he had paid tax or national insurance, all of which would have been obtainable. There was no evidence he had been registered with a doctor which again would have been obtainable. There was no evidence of his daughter's birth; a birth certificate should have been available, naming him as the father.

53. The claimant had not provided any evidence as to friends or acquaintances, which again would have been obtainable if he had truly been here since the 1990s. In essence, there was no evidence of his having been in this country at all until 2008 when he was arrested.
54. In the circumstances of this case, given his history of persistent offending, he was a real risk. The only time that the claimant had not been offending during the period when it was known he was present in this country was when he was in prison.
55. The claimant then said that people did know who he was, although he did understand that he had not produced any evidence on own account. He wanted to say he was sorry and that "I deserve one more chance". In the last fifteen months he had changed a lot.

## **Discussion**

56. The claimant has not adduced credible evidence to establish that he has been resident in this country for any significant period prior to 2008. The evidence he has given at various times has been inconsistent and if true it is extraordinary that he has not even produced the birth certificate in respect of his daughter. That evidence would have been readily available. He would also have been able to obtain documents corroborating his account to have been employed by the health authority and at Heathrow Airport. Although it is not incumbent on an applicant to provide corroboration, in a case such as this, when the only evidence to support the claim are inconsistent accounts given by a person who has been shown by his criminal records to be thoroughly dishonest, it is open to a Tribunal to reject that account. Although one would not lightly interfere with a finding made by the First-tier Tribunal, in my judgement there was simply no proper basis upon which the admittedly inconsistent evidence of this claimant could be accepted as truthful.
57. Moreover, even if I did accept the panel's finding that the claimant had been here since 1999, given that he was taken into custody when arrested (on his own account) and received a custodial sentence in March 1999, he clearly could not establish that he had been continuously resident for ten years before going to prison. Nor, on the evidence before either the panel or this Tribunal, could it be established that he had been exercising treaty rights continuously for at least five years. Even if I were to uphold the

panel's finding that the claimant "had been working for substantial periods prior to 2007" in the absence of any finding that he had been so employed for a continuous period of five years or more (and I do not consider that such a finding could be sustained on the evidence) he has not established that he was exercising treaty rights. Accordingly, whether or not he was present in this country, he has failed to establish that such presence would have been "lawful" in the sense that it was in accordance with the Regulations.

58. It follows that under Regulation 19(3)(b) the claimant may be removed if "the Secretary of State has decided that the person's removal is justified on grounds of public policy, public security or public health in accordance with Regulation 21".
59. The Secretary of State decided that it was so justified and in my judgement she was right so to decide. It is clear that the decision was taken on grounds which are based exclusively on the personal conduct of this claimant, and in my judgement it was proportionate. Having had regard to the NOMS 1 report, I too consider that the personal conduct of this claimant must indeed "represent a genuine present and sufficiently serious threat affecting one of the fundamental interests of society".
60. I have in mind in particular when considering the "likelihood of reconviction" that the writer of the report stated that "although his static factors indicate on OASys Report that he poses a medium risk of reoffending, in my view his dynamic factors suggest that if [the claimant] is released into the community his risk of reoffending would be imminent". The risk factors are set out.
61. The robbery conviction is particularly serious, and it should be noted that according to the victim, the claimant kicked her whilst she was on the ground. Given the history of persistent offending, which only stopped when the claimant was sent to prison, this claimant must present a serious risk to the public if he is released into the community.
62. When considering proportionality, I must have in mind that the claimant has provided no evidence of any private life in this country and that although he claims to have daughters here, other than his saying that he does, there has been no evidence regarding this either. In those circumstances, he has failed to put before the Tribunal any meaningful argument that his removal would be disproportionate by reason of the strength of any family or private life he might have in this country, in light of my finding that his continued presence here represents a significant risk to the community.
63. Accordingly, and purely on the basis of the present risk posed by this claimant, I consider that his removal is in accordance with the Regulations as set out above, and is proportionate. It follows that the panel's decision must be set aside and the Tribunal must remake the decision by dismissing the claimant's appeal.

**Decision**

**I set aside the determination of the First-tier Tribunal which had allowed the claimant's appeal and substitute the following decision:**

**The claimant's appeal against the decision of the Secretary of State to deport him is dismissed.**

Signed:

Date: 30 July 2014

Upper Tribunal Judge Craig