



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/01343/2014

THE IMMIGRATION ACTS

Heard at the Royal Courts of Justice
On 25 April 2016

Decision & Reasons Promulgated
On 20 May 2016

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

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(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr K Norton, Senior Home Office Presenting Officer
For the Respondent: Mr L Garrett, Counsel instructed by Leonard & Co Solicitors

DECISION AND REASONS

- 1) Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the respondent (the applicant in the First-tier Tribunal). Breach of this order can be punished as a contempt of court. I make this order because the respondent is a citizen of Iran who has been convicted of offences involving the misuse of drugs. I am satisfied that it is *arguable* that publicity about his crimes and identity *could* create a real risk for him in the event of his return to Iran. I have decided to dismiss the Secretary of State's appeal but my decision might be challenged successfully and even if it is not the respondent's circumstances might change and he might become eligible for deportation on a future occasion. It would

be a regrettable irony if publication of his identity strengthened his case against removal.

- 2) I have tried to bring particular care to this decision because the respondent has lived in the United Kingdom since 1992 (i.e. for about 24 years) and his former wife and two sons continue to reside there. He has the protection against deportation that is due to an EEA national but he has been sent to prison for eleven years for his part in offences involving the misuse of drugs. He has therefore been convicted of serious offences of a kind that attract particular public concern. Further the appeal has previously been allowed by the First-tier Tribunal and that decision overturned by the Upper Tribunal who ordered that it be heard again in the First-tier.
- 3) I have before me an appeal against the decision of a First-tier Tribunal Judge who allowed the appeal of the respondent, hereinafter "the claimant" against a decision of the Secretary of State on 26 June 2014 to make him the subject of a deportation order. It is not my task to decide if the claimant should be deported but if the Secretary of State has shown that the decision to allow the appeal was wrong in law.
- 4) Before considering the First-tier Tribunal's decision and reasons, I look at the reasons for deportation set out in the Secretary of State's letter of 26 June 2014 because the Judge's determination of the appeal should be considered in the light of the Secretary of State's case.
- 5) The letter began by identifying the claimant's conviction for conspiracy to import class A controlled drugs which the Secretary of State described, uncontroversially, as a "particularly serious offence".
- 6) The Secretary of State also confirmed that the case had to be considered under EEA Regulations.
- 7) Paragraphs 7 to 13 appear to be relevant but on close reading do no more than set out basic principles of law without indicating their application to this case. It looks as though they have been inserted from a word processor without much thought.
- 8) The claimant's immigration history is then reviewed.
- 9) There is a section headed "Assessment of Threat". This sets out Regulation 21(5) and, at paragraph 28, recognises that the NOMS1 assessment of the claimant found that he posed "a low risk of harm". Paragraph 28 continues, possibly significantly:

"However, the Secretary of State considers that your involvement in the organised importation of large amounts of Cocaine into the UK, for financial gain, does indeed mean you pose a significant risk of harm".
- 10) At paragraph 29 there is a reminder about the harm that the use of illegal drugs does to society.
- 11) The Secretary of State's decision continues to deal with the claimant's criminal activities and the sentencing remarks of the court.

12) Paragraph 36 states:

“In completing your NOMS1 assessment the offender manager found that you posed a low risk of re-offending. However, the offence of which you have been convicted is a serious one and the sentence that you received reflects this. Whilst you do not have an extensive criminal record and your offender manager has calculated that your risk of re-conviction is low, the Home Office takes the view that the serious harm which would be caused as a result of any similar instances of offending is such that it is not considered reasonable to leave the public vulnerable to the potential for you to re-offend”.

13) At paragraph 39 the Secretary of State says:

“The Home Office takes the view that there is insufficient evidence that you have adequately addressed all the reasons for your offending behaviour. Although it is acknowledged that you have been engaging with the prison regarding your rehabilitation (sic), However, (sic) prison is a controlled environment, and it is considered that your behaviour in the community has not been tested. The fact that you have not addressed the issues that led to your offending, increases the risk of you re-offending and continuing to pose a risk of harm to the public, or a section of the public”.

14) The letter then continues with findings about proportionality and then deals with rehabilitation. The decision refers to the case of Essa v SSHD [2012] EWCA Civ 1718. That case deals with proportionality and the need to decide if rehabilitation would be more readily achieved in the host country or country of nationality. The Secretary of State makes the point that the claimant’s community ties were stronger when he committed the offences than is presently the case and they clearly did not prevent him from offending. Further he could rehabilitate himself in Iran.

15) At paragraph 48 the Secretary of State purports to reach conclusions under the EEA Regulations and says:

“You have committed a serious criminal offence in the United Kingdom and, as explained above, the professional assessment is that there is a real risk that you may re-offend in the future. Account has been taken of the considerations outlined in EEA Regulation 21(6). Nevertheless, given the threat of serious harm that you pose to the public it is considered that your personal circumstances do not preclude your deportation being pursued. It is considered that the decision to deport you is proportionate and in accordance with the principles of Regulation 21(5)”.

16) The rest of the letter deals with Article 8 of the European Convention on Human Rights and Section 55 of the Borders, Citizenship and Immigration Act 2009 which are not particularly relevant to the decision. This is not a “human rights” appeal. It is about the EEA Regulations.

17) Regulation 21(5)(c) requires that before an EEA national can be deported:

“the personal conduct of the person concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society”.

18) The purported conclusion under EEA Regulations is misleading. It is unfair and, in my judgment, discreditable, to say without qualification that there is professional

assessment that “there is a real risk that you may re-offend” when the professional assessment actually says that there is a low risk of re-offending. There is almost always going to be *a* risk of somebody re-offending. I find it concerning that the concluding paragraph did not acknowledge that the professional assessment is that in this case the risk was low.

- 19) I also note that at paragraph 26 the Secretary of State recognised that the Rules require that the personal conduct of the person concerned “must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society”. Paragraph 36 (set out above) identifies a different test from the one required by the Rules. Instead of applying the test required by the Rules, the Secretary of State asked herself if it was “reasonable to leave the public vulnerable to the potential for you to re-offend”. A theoretical low risk of reoffending is not the same as a sufficiently serious threat. There is always some potential to reoffend. There is not always “a present and sufficiently serious” threat.
- 20) At paragraph 28 it is clear that the Secretary of State has assumed that because the claimant has been involved in smuggling large amounts of cocaine into the United Kingdom he now poses a significant risk of harm. The need for there to be a *present* risk, as required by the Rules, has disappeared from the analysis. I am not aware of any presumption at law that says a person who has been convicted of one serious offence is necessarily likely to commit another. As the letter acknowledges, the Rules specifically prohibit a decision based purely on the fact of the conviction. It is not at all clear from the refusal letter why the Secretary of State thought that the claimant presented a present risk.
- 21) I consider now the decision made by the First-tier Tribunal on this second occasion that the appeal was allowed.
- 22) The Judge acknowledged that the claimant is a citizen of Iran who was born in 1970 and that he had appealed the decision of the Secretary of State on 26 June 2014. The claimant was subject to a deportation order because he was convicted after a trial before the Crown Court at Bournemouth of offences involving conspiracy to import class A controlled drugs. It was clearly a very large scale operation because he was sentenced to eleven years’ imprisonment. He was ordered to serve a further eighteen months’ imprisonment consecutive to the punishment for the conspiracy because he had not made payments as required under the Proceeds of Crime Confiscation Proceedings.
- 23) The First-tier Tribunal Judge then considered the circumstances of the offence. The claimant was described as a “go-between or a facilitator”. The conspiracy had lasted for more than two years and had involved the illegal import of at least 25 kilograms of cocaine on each of six occasions. The claimant was held to have played a “key role” in assisting the ringleader and there was evidence that further smuggling runs would have been organised if the conspiracy had not been discovered.
- 24) The Judge then looked at the claimant’s immigration history. He arrived in the United Kingdom with permission in January 1992. He made various applications to

extend his leave including an unsuccessful claim for asylum but it seems that he has always had some kind of permission to be in the United Kingdom. His appeal against an earlier deportation decision (made to ensure his removal – as is explained by the First-tier Tribunal, at that time a deportation order was the means of removing a person from the United Kingdom; it did not necessarily suggest serious criminal misbehaviour) but the day before the appeal was dismissed he advised the Secretary of State that he had married a Portuguese national in March 1995. He was given a residence document on the basis of that marriage and an appeal against the grant of permanent residence was allowed in September 2008.

- 25) Save for the very grave matters that led to the present proceedings he is known to have only one previous conviction. He was conditionally discharged for driving whilst disqualified and using a vehicle without insurance. Although the respondent rightly made the point that driving whilst disqualified and without insurance should not be regarded as a trivial offences, I am not confident that the papers before me show the full circumstances. If the claimant was in fact driving whilst disqualified, then I would have expected there to be details of an earlier conviction that led to his being disqualified. Further, driving whilst disqualified is an offence that frequently attracts a prison sentence. Here the punishment was a conditional discharge. I have to conclude that there is a chapter missing somewhere from this part of the story. Whatever the truth about this might be there is nothing presented in his antecedents that adds much to the 11 years sentence for drug related offences.
- 26) The Judge then looked at the Secretary of State's approach to the decision to deport the claimant. The Secretary of State accepted, as is plainly the case, that the claimant is the ex-husband of an EEA national and therefore, in all the circumstances, can only be removed under the Immigration (European Economic Area) Regulations 2006. These bring into United Kingdom law Directive 2004/38/EC (Citizens' Free Movement) dealing with the rights of citizens of the Union and their family members to move and reside freely within the territory of the member states.
- 27) The respondent expressly (and correctly) accepted that the claimant has a right of permanent residence in the United Kingdom notwithstanding the break-up of his marriage. I emphasise at this point that although it might seem strange to a person unfamiliar with the operation of European Union law that the Iranian former husband of a Portuguese national is *not* subject to the ordinary law on deportation but to special Rules intended to promote the security of EEA nationals; such is the plain effect of Directive 2004/38/EC which the Secretary of State must follow.
- 28) The Secretary of State noted that the claimant's offender manager had found that he posed a low risk of re-offending but the Secretary of State said that there was "insufficient evidence that he had addressed his offending behaviour".
- 29) In fairness to the claimant the evidence shows that he does have a healthy relationship with his sons now aged about 17 and about 22 who live in the United Kingdom.

- 30) The First-tier Tribunal Judge then set out the relevant part of the EEA Regulations. Of particular relevance is paragraph 21(5)(c). As is explained above, this requires that when a relevant decision is taken on the grounds of public policy and it shall, in addition to other requirements, be taken in accordance with the principle that “the personal conduct of the person concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society”. The Rules make it clear beyond argument that the person’s previous convictions do not in themselves justify the decision.
- 31) The First-tier Tribunal Judge then directed himself correctly that he must assess the extent and nature of any such threat at the date of the hearing. He said at paragraph 15:
- “... obviously the [claimant] posed such a threat when he was involved in the conspiracy to supply class A drugs. The question is whether that threat is still present”.
- 32) At paragraph 17 the Judge referred to the case of **VB (Deportation of EEA national: human rights?) Lithuania [2008] UKAIT 00087** and then directed himself in the following terms:
- “Only if satisfied that deportation is required on grounds of public policy or public security should the Tribunal go on to consider whether deportation would contravene the Human Rights Convention. For the [claimant] to be deported as an EEA national his personal conduct must represent a genuine, present and sufficiently serious threat that must affect one of the fundamental interests of society; and exclusion must be proportionate in all the circumstances. Public policy measures should only be taken if there is a likelihood that the offender will commit further offences or in some other way infringe public security or policy. In every case the personal conduct of the person involved and in particular the implication of future risk or threats to public policy must be assessed. Measures taken by the UK against EEA nationals in the United Kingdom must be reasonable and not disproportionate to the gravity of the conduct concerned”.
- 33) At paragraph 20 the Judge said:
- “It is clear from the above that in respect of those faced with deportation under the 2006 Regulations I must consider not only the crime itself but must also look to the propensity of re-offending as a necessary element for the deportation decision. It is the present risk arising from the conviction that must be established. Previous convictions in themselves do not justify the decision. Under the terms of Regulation 21 above I am not permitted to take into account the element of deterrents. I must also when deciding on proportionality have regard to the principle of rehabilitation and make a finding as to whether the appellant’s prospects of rehabilitation would be greater in the UK than in the home country: **Essa (EEA: rehabilitation/integration) [2013] UKUT 316 (IAC)**. Under Regulation 21(6) I must consider the age, state of health, family and economic circumstances of the [claimant], his length of residence in the UK, his social and cultural integration into the UK and the extent of his links with his country of origin – Iran”.
- 34) He then reminded himself that it is for the claimant to establish the facts that he relies on in his appeal.
- 35) The Judge then reviewed the evidence relied on by the claimant.

- 36) The claimant had been released from immigration detention in August 2014 and had gone to live with his brother. He resumed his career as a chef. His marriage ended in 2013.
- 37) He insisted that he was not guilty of the offences for which he had been sent to prison. It was his case that the prison authorities had told him he could not be "downgraded to a category D prison because he was in denial" but he had insisted that he would not admit to something he had not done.
- 38) The Judge, uncontroversially, pointed out that the claimant had been convicted of the offence and it was not his role to look behind that conviction.
- 39) The claimant's case was that he did not have to be rehabilitated because he had done no wrong.
- 40) Nevertheless he had taken advantage of the opportunities available to him in prison, such as they were, and this included attending a victim awareness course where he made a good impression. He said that as well as having regular contact with his two sons he had an amicable relationship with his ex-wife and he even hoped he might be able to rekindle their marriage.
- 41) The claimant gave evidence about his relationship with his sons and his fear of return to Iran.
- 42) Paragraph 34 of the Decision is important and, with respect, not the best written part of the First-tier Tribunal's decision. However, after reading it carefully, I am satisfied that the Judge directed himself, correctly, that this is a case where there can be no deportation except on "serious grounds of public policy or public security" and in deciding if this is such a case, the Tribunal has to have regard to Regulation 21(5) and that 21(5) at paragraphs (a) to (e) set out the five principles which the judge identifies at paragraph 35 of the decision.
- 43) At paragraph 37 the Judge noted that the OASys Reports assessed the claimant's risk of re-offending as "low". It was expressed to be at 5% in the first year and 10% in the second year. The risk of harm to others is expressed as low and there is a memorandum from Serco confirming that in September 2010 he posed a low risk of re-offending.
- 44) At paragraph 38 the Judge reminded himself that he has to reach his own view on the evidence and although weight should be given to any statistical assessment of re-offending, such as that provided by NOMS, it does not bind him.
- 45) The Judge reminded himself of the claimant's achievements in prison and in particular his attendance at a victims' awareness course. He noted that the claimant's behaviour in prison gave no reason for concern. In particular there had been no adjudications recorded against him and he had given negative samples whenever he was tested for drugs.

- 46) He reminded himself that the claimant denied his guilt. He was, nevertheless, recorded as showing insight into the effects of crime on others.
- 47) The Judge accepted that the claimant lived with his brother, that he had resumed his work as a chef, that he had a close relationship with both of his sons and that his wife supported him in the interests of their children.
- 48) He also reminded himself that the claimant was subject to licence conditions until 2019 which meant he was subject to the supervision of a probation officer and could be recalled to prison if there was any cause for concern.
- 49) The judge further reminded himself that the claimant had been convicted after a long trial and had been punished with a substantial sentence even though he was of previous good character. While the claimant insisted that he was not guilty, the Court of Appeal, presided over by the Lord Chief Justice, had upheld the conviction and sentence. He noted that the claimant had contacted the Criminal Cases Revision Committee but said that that does not “prove anything except that the [claimant] still does not accept that he committed any crime”. He found that the claimant was not only guilty of the offences but he was “heavily involved in this conspiracy”. Nevertheless he accepted that the claimant was of good character apart from the driving offence for which he was conditionally discharged before taking part in the conspiracy to import class A drugs. He was involved in the lives of his children and his former wife wanted that involvement to continue.
- 50) The Judge then dealt with the claimant’s contacts with Iran in the context of how he might settle there. This part of the Decision is not relevant for present purposes.
- 51) At paragraph 49 of his Decision the Judge dealt with the fact that the claimant insisted that he was not guilty of the offences concerned and said:

“I have to make the finding that his rehabilitation must be regarded as incomplete until such time as he is prepared to admit his guilt and face up to what he has done: abandoning fanciful explanations as to how he was at the centre of this conspiracy and made £50,150”.
- 52) The Judge then further reminded himself that although there was a “low risk” assessment, there was therefore an assessment that there was some risk of the claimant reoffending.
- 53) He found that the claimant was now separated from his co-conspirators by reason of his prison sentence and the conditions of his licence to be absent from prison.
- 54) At paragraph 51 the Judge deduced that the claimant had been motivated by greed.
- 55) At paragraph 53 the Judge decided that the claimant’s six years spent in a closed prison, during which time he had lost his marriage, had been a “devastating” experience and that the prospect of return to prison would deter him from committing further serious crime.

56) He then concluded that the claimant was not a present threat and he allowed the appeal.

57) I consider now how the decision is criticised in the grounds.

58) Ground 1 asserts that there is misdirection of law. It says that the Tribunal relied on Essa and then says:

“It appears from the determination [35-37] that the FTJ has considered proportionality and rehabilitation prior to making a finding that A’s personal conduct represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society (Regulation 21(5)(c)) and in doing so has failed to follow established law as determined by the UT at [29(b)] of MC (Essa principles recast) [2015] UKUT 520 (IAC)”.

59) The grounds then set out all of that paragraph although the important part is (b) which states unequivocally that:

“It is only if the personal conduct of the person concerned is found to represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society ... that it becomes relevant to consider whether the decision is proportionate ...”

60) The Judge has invited this criticism because paragraph 34 is less than ideal and paragraph 35 begins by saying “The first principle is that the decision must comply with the principle of proportionality”. However the reference to the “first principle” is clearly a reference to Regulation 21(5)(a) where the principle of proportionality is the first one to be listed. I do not accept that the Judge decided proportionality first (which would have been wrong). The Decision does not lend itself to any other construction except that the First-tier Tribunal decided separately if the claimant’s conduct amounted to a “present threat” and the judge decided that it did not. There really is nothing of substance in ground 1.

61) The second ground is in various forms and alleges that the First-tier Tribunal failed to take account of the evidence or resolve conflict in the evidence. Paragraph 3 of the grounds asserts that although the risk of offending has been assessed as low “a propensity to offend, even at the lower end of the scale, still represents a risk to the public”. It says that the First-tier Tribunal Judge should have considered the harm further offending could cause. This is a potentially interesting point but not one that was not made in the refusal letter. It was not the case that was presented before the First-tier Tribunal and the Judge did not err by failing to consider it. The relevant question is not whether there is a risk to the public but whether “the personal conduct of the person concerned must present a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society”. The Judge concluded that the claimant was not likely to re-offend and that there was not “a genuine, present and sufficiently serious threat”.

62) Point 4 contends that it is a “critical part of the assessment of the likelihood of [the claimant] committing offences again is whether they accept culpability for their actions”. I do not understand why the claimant has been identified in the plural form. There is only one of him. Why this is described as a critical part is unclear.

Nevertheless the fact that the claimant had not accepted responsibility for his actions was uppermost in the Judge's mind. This point is considered particularly at paragraph 49 where the Judge clearly regarded it as a negative factor that the claimant did not accept responsibility for what he had done. It did not effect his conclusion that he did not expect the claimant to get into trouble again. The Secretary of State's point is just wrong.

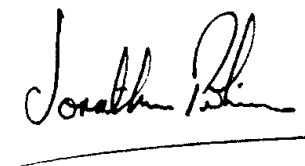
- 63) Point 5 complains that the First-tier Tribunal Judge failed to resolve a conflict between the completion of a victims' awareness course and his refusal to accept responsibility for his criminal conduct and that rehabilitation is unnecessary because he has done nothing wrong. I do not agree with this ground. There is no conflict between being aware of the harm that criminals can do and denying any involvement in criminal acts. A person does not have to be criminal in order to appreciate the bad consequences of crime. The fact that the claimant does not admit that he has done anything wrong might make it difficult for him to be rehabilitated but it does not mean that he will necessarily commit further offences. The judge was clearly concerned that the claimant had not faced up to what he had done and said so in rather emphatic terms but also took the view that he had been sobered by his time in custody and would behave in the future. There is nothing irrational in such a finding.
- 64) Neither do I see any merit in ground 6 which complains that the Judge gave weight to the claimant having settled habits after his release from custody when these things had not stopped him getting into trouble before. The only point the Judge made is that a person with settled habits and community support is less likely to offend than a person who has none of these things.
- 65) Neither is there merit in the contention that the Judge was wrong to accept that the claimant would be kept away from his former associates by his probation officer. The point being made was that if the claimant does not behave himself, which includes his maintaining his probation officer's goodwill, he can be readmitted to custody. Presently his primary co-offenders are presumed to be still in custody because their sentences are longer. The First-tier Tribunal Judge's decision was not perverse. He was just taking a view of the evidence.
- 66) Point 8 contends that the First-tier Tribunal Judge had erred by failing to take into consideration the full content of the "JSR's" (I assume that this is a reference to the Judge's Sentencing Remarks) and whether the claimant had addressed any gambling problems. This might have been a very good point to have made in the refusal letter. It is a bit late to make it now. Although it was the claimant's case that he has gambled, and gambled successfully, I have found nothing to suggest that there is a proper reason to think that this man has a gambling habit that controls him. The OASys assessment excludes concern about drug misuse or alcohol misuse. It recognises finance as being linked to a risk of re-offending but concludes there is no risk of serious harm.

- 67) There really is no basis in the evidence to raise concerns that the claimant is a compulsive gambler. This is not a point that the First-tier Tribunal Judge should have addressed.
- 68) Point 9 refers to the decision in Regina v Bouchereau Case 30/77 which informs us that:
- “Although in general a finding that such a threat exists implies the existence in the individual concerned of a propensity to act in the same way in the future, it is possible that past conduct alone may constitute such a threat to the requirements of public policy”.
- 69) I do not find this the clearest of phrases to understand. I totally fail to see how any previous offence, not linked to a propensity to offend, can give rise to a finding that a person presents a present threat. It does not mean that a Judge errs by reason of finding that a person with a conviction for a serious offence does not present a present threat.
- 70) As a final and possibly disjunctive part of point 9 the Secretary of State’s grounds assert:
- “Although the FTJ acknowledges the role A [the claimant] played in the conspiracy at [46] the FTJ fails to consider the significant length of time over which the offence took place or the continued participation of A following the arrest of one of his co-defendants [5]. It is relevant to the assessment of the present risk as to whether the circumstances of the offence continue to have an implication”.
- 71) This is an unjustified criticism. The First-tier Tribunal Judge made plain that he had considered all the material and there is no reason to assume he has not considered these points.
- 72) His reasons for allowing the appeal are that he is not persuaded the claimant is now a present risk. That is based largely on the prison and OASys Reports, on the view that the judge took of the salutary affect of a prison sentence on the claimant and to some extent the time that has lapsed since he came out of custody.
- 73) These grounds cause me considerable concern because they read to me not as a considered attack on the decision of the First-tier Tribunal Judge but as an attempt to raise points that ought to have been considered before the decision was made to deport the claimant. If they formed part of that decision then they should have been put in the letter.
- 74) Although I have not said much about the submissions, or indeed the Rule 24 reply, I have considered them. I took careful notes at the hearing and drafted this Decision when the matters were very much in the front of my mind. I have considered all of the material relied upon.
- 75) I cannot agree with Mr Norton’s contention that the Judge failed to follow Essa because he erroneously failed to consider proportionality before other points. It is quite clear to me that when the Decision is read as a whole the Judge considered

Regulation 21(5)(c) as a separate issue, which it is, it does not matter when he considered it.

- 76) This is a troubling case for many reasons. Although the claimant was a man of effectively good character his first proven adventure into serious crime was for something very serious. His offence was not a one-off act in an impetuous moment which might be regretted for ever more, such as happens when a person loses his temper and kills someone, but it was planned and persisted over a prolonged period. The claimant is clearly, according to the evidence, a man capable of serious criminal activity.
- 77) I say as an aside that the arguments that have prevailed so far in this case would have been of little or any assistance to the claimant if his case did not fall to be decided under the EEA Regulations. Arguments about rehabilitation or the likelihood of re-offending are of limited value in other cases because deportation expresses society's repugnance.
- 78) However for the reasons explained above this claimant is entitled to the protection of the EEA Regulations. He is in a different position. He cannot be deported unless he represents a present threat.
- 79) The First-tier Tribunal Judge has conspicuously analysed all of the evidence. He has not been assisted by the rather limp way the case was presented in the refusal letter (that of course is nothing to do with the Presenting Officers) and it is not his job to work out arguments that might assist the Secretary of State or any other party to an appeal.
- 80) The Judge's key finding is at paragraph 53 of the decision where he says:
- "I find the prospect of return to prison would likely deter him from the commission of further serious crime".
- 81) The claimant is a man of settled habits who, before he committed offences, was in regular work and living with his family. As it is no doubt intended to be, prison was a harsh experience for him. The Judge was entirely justified in concluding on the facts of this case that the prospect of return would deter him from bad behaviour.
- 82) In short, the First-tier Tribunal has reached a decision that was open to it and has given legally permissible reasons.
- 83) I dismiss the Secretary of State's appeal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 17 May 2016