Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00029/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 29 September 2016	**On 10 April 2019**
And 25 January 2019	

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

ALEXANDRE [A]
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:	Mr Solomon, instructed by MKM solicitors (29/09/16)
	Ms S Iqbal instructed by EA Law Solicitors (25/01/19)
For the Respondent:	Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals against the decision of the Secretary of State made on 6 January 2015 to deport him pursuant to Regulation 19(3)(b) of the Immigration (European Economic Area) Regulations 2006. His appeal against that decision was allowed by First-tier Tribunal Judge Kamara on 27 October 2015. For the reasons given in my decision promulgated on 30 September 2016 that decision was set aside.

2. The remaking of that decision did not take place until 25 January 2019 for a number of reasons including the appellant being held on remand pending a trial in which he was found not guilty, that trial being postponed until June 2017, and, on account of the reference made to the CJEU in SSHD v Vomero [2016] UKSC 49 which was not resolved until relatively recently. Difficulties arose also as the appellant's representatives were the subject of intervention and there has had to be two changes of solicitors.

3. The appellant is a citizen of Portugal who was born on 18 February 1986. He arrived in the United Kingdom in March 1994 with his mother and siblings, and has remained here ever since. He was educated here, and has worked in short-term jobs. He has a partner with whom he has a child; he and his partner have children from previous relationships.

The appellant's case

4. On 14 October 2008, the appellant was on his own confession convicted of robbery, possession of a firearm and taking a conveyance without consent. This was because he had participated in the armed robbery of a delivery van. He was sentenced to 9 years' imprisonment as a result. He was released from custody on 8 November 2012, entered immigration detention, and was released on bail on 13 December 2012.

5. On 7 October 2012, the respondent made a decision to deport the appellant. He appealed against that decision and the decision was withdrawn at his appeal on 8 February 2013. On 9 January 2015, he was convicted of mail in transmission and sentenced to 28 days' imprisonment.

6. The appellant's case is that, having lived lawfully in the United Kingdom for 10 years prior to his imprisonment, he is entitled to the benefit of reg. 21 (4) of the EEA Regulations; has not lost that benefit despite being imprisoned; and, that it is for Secretary of State to show that there are imperative grounds of public security justifying his deportation.

7. Alternatively, the appellant submits that he has acquired permanent residence under the EEA Regulations; has not lost it through being imprisoned; and so is entitled to benefit from reg. 21 (3) of the EEA Regulations such that it is for the Secretary of State to show that there are serious reasons of public policy or security justifying deportation.

8. The appellant further submits that, in the event of having lost the benefit of regs. 21 (3) and (4), it is still for the respondent to show that he does not constitute a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society and that she has not done so. It is also the appellant's case that, having had regard to the factors set out in reg. 21 (5), his deportation would, on any basis, be disproportionate.

The respondent's case

9. The respondent accepted that the appellant has lived in the United Kingdom since 1995 but did not accept that he is entitled to the benefit of regs. 21 (3) or (4) on the basis that he had not shown that he had acquired permanent residence, noting an absence of evidence that he had been exercising Treaty rights or had benefited from comprehensive sickness insurance.

10. The respondent considered that the applicant was, in light of his offending, and his assessment as being at MAPPA level 1, that he is a genuine and present threat to society. She also considered that his deportation was, having had regard to the factors set out in reg. 21(5), proportionate. The respondent considered also that his removal would be proportionate having had regard to article 8 of the Human Rights Convention.

The decision of the First-tier Tribunal and grounds of appeal

11. On appeal, the judge found that: -

    (i) The appellant had acquired permanent residence on 5 April 2000 [25], on the basis that he had in the five years prior to that lived continuously in the United Kingdom [26] as the child dependant of an EEA national (his mother) who had been exercising Treaty rights as a worker [23] – [25]; and, had been residing continuously in the United Kingdom since March 1994 [28];

    (ii) A decision to remove an EEA national who had resided for a period of at least 10 years may not be taken except on imperative grounds of public security [29], this regulation to be taken into account in assessing the evidence;

    (iii) Having had regard to the OASys report and NOMS report, as well as the judge's sentencing remarks [31- [38], his most recent conviction [39] and other matters, that the appellant did not represent a genuine, present and sufficiently serious threat to the fundamental interest of society [53], there being [54], no evidence or submissions that there were imperative public security grounds justifying the appellant's removal

12. The Secretary of State sought permission to appeal on the grounds that the judge erred:

    (i) In finding that the appellant had acquired the permanent right of residence, there being insufficient evidence to that effect;

    (ii) In failing to consider whether the appellant's imprisonment had, in the light of MG [2014] EUECJ C-400/12 deprived him of the right to the highest level of protection set out in reg. 21 (4), this being material as there were serious grounds of public policy justifying his deportation;

    (iii) In concluding that the appellant was not a genuine, present and sufficiently serious threat, given that in assessing this, she had wrongly applied a threshold

higher than that to which the appellant was entitled, and she failed properly to take into account that he had been assessed as a medium risk.

13. On 8 December 2015 Upper Tribunal Judge Smith granted permission on all grounds.

The Hearings before the Upper Tribunal

14. The appeal first came before Deputy Upper Tribunal Judge Archer on 25 February 2016 who subsequently became seriously ill and was unable to produce a decision. For that reason, a transfer order was made, and the matter came before me on 29 September 2016.

15. I heard submissions from both parties. I deal with the grounds in turn.

Ground 1:

16. The Secretary of State appears from the refusal letter to have misunderstood the basis on which it was said that the appellant had acquired permanent residence. Until the age of 21 he was, for the purposes of the EEA Regulations a family member of the EEA national as his mother is an EEA national (see reg. 7 (i) (b)(i)). The issue was therefore whether his mother had been a qualified person and so lawfully resident for a period of five years. The fact that this was acquired prior to the entry into force of the EEA Regulations or the Citizenship Directive 2004/38/EC is not relevant – see Lassal [2010] EUECJ C-162/09

17. There was, as the judge noted [23] – [26] substantial evidence that the mother had been employed, and this was adequate and sufficient to justify her conclusion. The submission to the contrary is in reality an argument about weight, or an unfounded submission that the finding of fact was perverse. Accordingly, I conclude that ground 1 does not demonstrate an error of law.

Ground 2

18. It does not appear from the decision that the judge directed herself to the principles set out in MG which is binding. Of particular note is what was said at [37] - [38]:

> "37 Lastly, as regards the implications of the fact that the person concerned has resided in the host Member State during the 10 years prior to imprisonment, it should be borne in mind that, even though – as has been stated in paragraphs 24 and 25 above – the 10-year period of residence necessary for the grant of the enhanced protection provided for in Article 28(3)(a) of Directive 2004/38 must be calculated by counting back from the date of the decision ordering that person's expulsion, the fact that the calculation carried out under that provision is different from the calculation for the purposes of the grant of a right of permanent residence means that the fact that the person concerned resided in the host Member State during the 10 years prior to imprisonment may be taken into consideration as part of the overall assessment referred to in paragraph 36 above.

> 38 In the light of the foregoing, the answer to Questions 1 and 4 is that 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 thereunder, 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."

19. How a judge is to assess whether the period of imprisonment does break continuity of residence such as to remove the benefit of the highest level of protection against deportation was addressed in MG (prison-Article 28(3) (a) of Citizens Directive) Portugal [2014] UKUT 392 (IAC) to which the judge does not refer.

20. Despite Mr Solomon's submissions to the contrary, I consider that there is no indication in the decision that the judge took into account the possibility of the imprisonment breaking the continuity of the 10 years prior to the date of decision, or that she considered in sufficient detail whether the integrating links had been broken. While I accept that the judge does make findings as to family links to the United Kingdom at [58] and [59] in particular, that is done in the context of the proportionality of deportation, not in the context of whether those integrating links remain such that the benefit of the highest level of protection is preserved. This is, I consider, an error of law.

21. Whether or not this error is material, in light of the finding at [53], is in part bound up with ground 3.

22. Mr Kotas submitted that the error is material, given that the judge appears first to have applied the highest threshold in assessing the threat at [29], [39], and also to have reached contradictory conclusions at [45]. On that basis, the findings at [53] are unsustainable. Mr Solomon submitted to the contrary.

23. As noted above the judge's conclusion that the appellant is entitled to the highest level of protection is unsustainable. I consider that this error has affected the judge's approach to the finding at [53] that the applicant did not present a genuine, present and sufficiently serious threat. That test requires an evaluation of seriousness; clearly not all threats reach the threshold. As Mr Kotas submitted, at [29] the judge, before setting out the evidence of the appellant's offending and the assessment of risk, expressly directed herself at [29] that she would bear in mind that "a decision [to deport] may not be taken except on imperative grounds of public security" in assessing the evidence. Further, at [39] when discussing the more recent conviction for theft, noted that she took that offending into consideration "in determining whether there are any imperative grounds for the [appellant's] deportation."

24. It is also, I consider, difficult to reconcile the assessment that there is a propensity on the part of the appellant to reoffend [45] with a conclusion properly reached, applying the lowest test, that there is no "genuine, present and sufficiently serious threat to the fundamental interests of society". This, and the judge's finding also at [45] that "I do not accept that the [appellant] represents and actual and compelling risk to public security" indicates that the judge was, in reaching the conclusion at [53] applying the higher threshold in assessing the threat. Thus, that conclusion is affected by the error of law identified at [19] above.

25. For these reasons, I am satisfied that the decision of the First-tier Tribunal did involve the making of an error of law, and I set it aside.

Remaking the decision

26. At the resumed hearing I heard evidence from the appellant, the appellant's mother, the appellant's partner and the appellant's partner's stepfather. I also heard submissions from both representatives.

The Law

27. It was accepted by both representatives that, given the date of the decision in this case and when the appeal was commenced, that it is the 2006 Regulations which apply to this appeal.

28. Regulation 21 of the EEA Regulations provided as follows

> '21. — Decisions taken on public policy, public security and public health grounds
>
> (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; or
> >
> > (b) is under the age of 18, unless the relevant decision is necessary in his best interests, as provided for in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989[1].
>
> (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.

…'

29. In B and Vomero [2018] EUECJ C-316/16 the Court of Justice held:

"1. Article 28(3)(a) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC must be interpreted as meaning that it is a prerequisite of eligibility for the protection against expulsion provided for in that provision that the person concerned must have a right of permanent residence within the meaning of Article 16 and Article 28(2) of that directive.

2. Article 28(3)(a) of Directive 2004/38 must be interpreted as meaning that, in the case of a Union citizen who is serving a custodial sentence and against whom an expulsion decision is adopted, the condition of having 'resided in the host Member State for the previous ten years' laid down in that provision may be satisfied where an overall assessment of the person's situation, taking into account all the relevant aspects, leads to the conclusion that, notwithstanding that detention, the integrative links between the person concerned and the host Member State have not been broken. Those aspects include, inter alia, the strength of the integrative links forged with the host Member State before the detention of the person concerned, the nature of the offence that resulted in the period of detention imposed, the circumstances in which that offence was committed and the conduct of the person concerned throughout the period of detention.

3. Article 28(3)(a) of Directive 2004/38 must be interpreted as meaning that the question whether a person satisfies the condition of having 'resided in the host Member State for the previous ten years', within the meaning of that

provision, must be assessed at the date on which the initial expulsion decision is adopted."

30. It is clear from B that in order to obtain the highest level of protection the person concerned must have acquired the right of permanent residence within the meaning the Regulations.

31. It is also clear that the requirement to have resided in the United Kingdom for the previous ten years may be satisfied for an overall assessment of the person's situation, taking into account all the relevant aspects, leaves the conclusion that notwithstanding the contention the integrative links between the person concerned and the host member may not have been broken. These aspects include inter alia, the strength of the integrative links forged with the host Member State before the detention of the person concerned, the nature of the offence that resulted in the period of detention imposed, the circumstances in which the offence was committed and the conduct of the person concerned throughout the period of detention.

32. In reaching my conclusions, I have applied Schedule 1 of the 2016 Regulations which provides as follows, so far as is relevant:

'2. An EEA national or the family member of an EEA national having extensive familial and societal links with persons of the same nationality or language does not amount to integration in the United Kingdom; a significant degree of wider cultural and societal integration must be present before a person may be regarded as integrated in the United Kingdom.

3. Where an EEA national or the family member of an EEA national has received a custodial sentence, or is a persistent offender, the longer the sentence, or the more numerous the convictions, the greater the likelihood that the individual's continued presence in the United Kingdom represents a genuine, present and sufficiently serious threat affecting of the fundamental interests of society.

4. Little weight is to be attached to the integration of an EEA national or the family member of an EEA national within the United Kingdom if the alleged integrating links were formed at or around the same time as—

(a) the commission of a criminal offence;

(b) an act otherwise affecting the fundamental interests of society;

(c) the EEA national or family member of an EEA national was in custody.

5. The removal from the United Kingdom of an EEA national or the family member of an EEA national who is able to provide substantive evidence of not demonstrating a threat (for example, through demonstrating that the EEA national or the family member of an EEA national has successfully reformed or rehabilitated) is less likely to be proportionate.

…

> 7. For the purposes of these Regulations, the fundamental interests of society in the United Kingdom include—
>
> (a) preventing unlawful immigration and abuse of the immigration laws, and maintaining the integrity and effectiveness of the immigration control system (including under these Regulations) and of the Common Travel Area;
>
> (b) maintaining public order;
>
> (c) preventing social harm;
>
> (d) preventing the evasion of taxes and duties;
>
> (e) protecting public services;
>
> (f) excluding or removing an EEA national or family member of an EEA national with a conviction (including where the conduct of that person is likely to cause, or has in fact caused, public offence) and maintaining public confidence in the ability of the relevant authorities to take such action;
>
> (g) tackling offences likely to cause harm to society where an immediate or direct victim may be difficult to identify but where there is wider societal harm (such as offences related to the misuse of drugs or crime with a cross-border dimension as mentioned in Article 83(1) of the Treaty on the Functioning of the European Union);
>
> (h) combating the effects of persistent offending (particularly in relation to offences, which if taken in isolation, may otherwise be unlikely to meet the requirements of regulation 27);
>
> …
>
> (j) protecting the public;'

33. I was not addressed on any of these factors specifically.

34. It is to be noted from SSHD v Straszewski [2015] EWCA Civ 1245 that Moor-Bick LJ observed at [13]:

> "13. Given the fundamental difference between the position of an alien and that of an EEA national, one would expect that interference with the permanent right of residence would be subject to more stringent restrictions than those which govern the deportation of nationals of other states. Moreover, since the right of free movement is regarded as a fundamental aspect of the European Union, it is not surprising that the Court of Justice of the European Union ("CJEU") has held that exceptions to that right based on public policy are to be construed restrictively: see, for example *Van Duyn v Home Office (Case C-41/71) [1975] Ch 358* and *Bonsignore v Oberstadirektor der Stadt Koln (Case C-67/74) [1975] ECR 297*."

35. Commenting on that, the Inner House Court of Session in Goralczyk [2018] CSIH 60 at [22]:

> 22. Moore-Bick LJ's expectation that there should be stringent restrictions on a Member State's ability to remove an EEA national, including a "foreign criminal", who has acquired the right to reside in the United Kingdom is borne out by the terms of the 2006 Regulations. In particular, a decision to deport an EEA national with a permanent right of residence may not be taken except on serious grounds of public policy or public security: regulation 21(3) . Regard has to be had to the word "serious", a point made by Mr Caskie when explaining the effect of the 2006 Regulations as being to establish three levels of rights and consequent degrees of protection against removal. A decision to remove a person who has resided in the United Kingdom for less than five years may be taken "on grounds of public policy" but a decision to remove a person who has resided in the United Kingdom for more than five years cannot be taken "except on serious grounds of public policy". It follows that "serious grounds" of public policy must mean something different from "grounds" of public policy, and it follows from that that the decision-maker must identify just what the relevant grounds are and then evaluate them as to their seriousness. Moreover, a relevant decision must be taken in accordance with the principles set out in regulation 21(5) . Finally, in terms of regulation 21(6) , before taking such a decision the decision-maker must take into account considerations such as the age, state of health, family and economic situation of the person, his length of residence in the United Kingdom and the extent of his links with his country of origin

36. In assessing first whether the appellant is entitled to the highest level of protection the starting point is to consider first whether he had obtained permanent residence. As found by the First-tier Tribunal, that finding being preserved, he did so in 2000. It is therefore necessary to undertake the exercise to consider next which period of ten years is to be considered. In this case it is that the ten years flowing backwards from the date of the deportation decision, that is 11 February 2015. It is observed first that on that basis the appellant had indeed spent at least ten years resident in the United Kingdom (it is nearly fourteen years) before he committed the crime for which he was sentenced to nine years' imprisonment. It is also necessary to bear in mind what was said in Vomero

37. I accept that the appellant arrived in the United Kingdom in 1994 at the age of 8 and entered education here. He attended primary school and then secondary school although he appears to have ceased attending on a regular basis in year ten. He took some casual employment and in 2004 began a relationship with Miss [H] who is mother of the appellant's oldest son born in 2005. The appellant and Miss [H] together with her twin children from another early relationship, lived together but the relationship came to an end whilst he was in prison.

38. Since he was released from imprisonment in 2012, the appellant has in 2013 began another relationship with Miss [JM]. They have lived together and the couple have since had a child. The appellant is now also working full-time. It is clear from the evidence of Miss [M] as well as Miss [H] and the appellant that he can maintain a close relationship with his son K, and takes him football training on every Saturday. In addition, he stays every weekend and during the summer holidays.

39. In assessing the appellant's position whilst in prison, I note that he was able to maintain contact with his son, his former partner and also with family. In addition, it is evident that he was able to obtain a number of qualifications whilst at HMP Canterbury.

40. That is confirmed by the behaviour report from the wing officer as well as cleaning officer dated 15 April 2012 which also confirm that he is hard working and is trusted with a good attitude.

41. In considering the OASys Report which was completed on 16 May 2012 that he was assessed at low risk of general offending, that is 4% within twelve months and 8% within twenty-four months. It is also observed [2.13] that he is making steps in the right direction regarding addressing his offending behaviour and also at [4.7] that losing his last job had contributed to him carrying out the index offence. He was confident that should he be able get employment pretty quickly and is motivated to address his offending behaviour. It is also noted [6.9] that the relationship with his mother has got better and that he has started a new relationship. Equally at [7.2] it is observed that the appellant works in a privileged area of the prison stores, is gaining qualifications and he is considered to be at low risk of harm and reconviction. It is also noted [10.8] that he had been granted category D status but prevented from open conditions due to his immigration status. Also, at [11.9] it is recorded

> "Previous OASys noted that Mr [A] did not lose his temper easily and did not get violent, he does however admit that he sometimes does things without thinking about the consequences.
>
> Since this statement of Mr [A] has been assessed as unsuitable for the TSP and CALM courses, this assessment was based on his OGRS score being too low. Mr [A] appears to listen to others but actually taking on board and putting into practice the advice that others give him appears to be something he needs to work on, this may become easier, as Mr [A] has informed me that prison has had impact on him, and the way he will go about dealing with situations in the future. It is also recorded that he displays no obvious pro-criminal attitudes, has no issues with people in authority."

42. The summary sheet assessing risk of serious harm records low in all areas with the except of risk in the community to the public being medium. But whilst the OGRS 3 scores are very low, OGP is at 5% to 9%, OVP at 9% and 15% in the first and second years.

43. Although there appear to have been a few adjudications earlier in the appellant's time in prison, these are of a relatively minor nature and early on in his imprisonment.

44. The appellant's explanation for him pleading guilty to the second offence is that he believed that this would result in a considerably shorter sentence than if he were to be recalled from license as even were he found not guilty, there was a chance that he would have to serve a greater part of his first sentence. I note Mr Kotas submitted

that the thought process shown is not logical, I can understand how someone in the appellant's position, being on license, might wish to make a guilty plea to avoid less time in jail. That said, the appellant's testimony to whether he was in fact guilty, is equivocal as he did not appear to be denying the circumstances of the offence. Worryingly, it appears to be another example of the appellant not thinking through the consequences of his actions. The same could be said about the circumstances in which he found himself in a house which was raided by the police where firearms were found. Although he was found not guilty of that offence, and there are no substantial details about the crime such that would allow me to make any relevant findings, it would appear that he was in the wrong place at the wrong time.

45. I accept the appellant's evidence that he has few relatives in Portugal and none with whom he has contact. I note that his mother said that she had last been to Portugal some three to four years ago and had stayed in a hotel and that of her siblings two of her sisters were in America and her brother was living in Angola and she was not in contact with them. There is a difference in the testimony between the mother and the appellant as to the number of siblings she has, but that is I conclude not material given the lack of closeness between her and them, and by extension the appellant.

46. I accept on the oral evidence from the appellant and Miss [M] that they are in a subsisting and stable relationship and I note her evidence that the appellant has grown up a lot and now that he is in stable employment he wants things to get better.

47. Viewing the evidence as a whole, I consider that certainly at the point of his imprisonment in 2008, having spent his life since at the age of 8 in the United Kingdom and having formed a family here, and bearing in mind that prior to that he had no criminal history, that the appellant did have integrative links to United Kingdom. I consider also that the appellant has shown to the balance of probabilities that in the unusual circumstances of this case, those integrative links were not broken by custody. I reach that conclusion on the basis that the appellant was able to maintain his strong family ties to his son and with the wider family despite the fact that the relationship with Miss [H] broke down and also that he was in prison making good use of his time. He continued in education and appears certainly from the evidence before me to have shown a proper attitude.

48. The question then arises as to whether the second sentence, albeit it was short period, had the effect of breaking the integrative links. I do not consider that the short level of imprisonment did so given the short duration of the sentence that this is so and the fact that he has now formed a stable relationship and is in stable employment is indicative that the links were not so broken.

49. I note the observation by the appellant's probation officer in 2015 that his risk profile had risen (see bundle at K2) which states "Currently I would assess Mr [A] as a medium risk of harm and my review will reflect this." Medium risk of harm means there are identifiable indicators of a risk of serious harm. It then has a potential to cause serious harm but it is unlikely to do so unless there are a change of

circumstances, for example, failure to take medication, loss of accommodation, relationship breakdown, drug and alcohol misuse.

50. It is, however, unclear whether any formal review was undertaken or what was said in that document. The letter is, understandably, framed in less than definite terms.

51. Pausing there to take stock, I note that the initial decision to deport the appellant was withdrawn by the respondent. I accept that he committed a further crime for which he was sentenced to a relatively short period of imprisonment. Taking into account the length of time he had spent here, the family and other links he had developed and the fact that he had by 2015 (as is later shown by additional evidence), formed a stable relationship and has since this incident in 2015 not committed any further crime, I conclude that as at the date of decision in this case, unusually on the facts, the appellant's integrative links were such that they were not broken by the term of imprisonment and that accordingly, the appellant is entitled to the higher level of protection.

52. Given that the appellant has not reoffended in a violent manner since his conviction in 2018 for a single incident of armed robbery, and given that there is no indication that he has been guilty of any further crime since 2015, I conclude that there is no basis of which he could be said to pose an imperative threat to the United Kingdom.

53. However, even if I am wrong on that, and the appellant is only entitled to the medium level of protection, I conclude that there are at present for the same reasons, insufficent evidence to show that there at as at the date of hearing, given the lack of offending, and the lack of serious offending in the nature of his conviction for armed robbery, that the appellant is now, given that he is settled within a family and with stable employment, a sufficiently serious threat.

54. Accordingly, for these reasons, I allow the appeal under the EEA Regulations.

Notice of Decision

1 The decision of the First-tier Tribunal involved the making of an error of law, and I set it aside.

2 I remake the decision by allowing the appeal under the EEA Regulations.

3 No anonymity direction is made.

Signed Date 5 April 2019

Upper Tribunal Judge Rintoul