



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00071/2019**

THE IMMIGRATION ACTS

**Heard at Cardiff Civil Justice Centre Decision & Reasons Promulgated
On the 17 March 2022 On the 13 April 2022**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

DIONISIO CORREIA

Respondent

Representation:

For the Appellant: Ms S Rushforth, Senior Home Office Presenting Officer

For the Respondent: No representative or appearance

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State, for convenience I will refer to the parties as they appeared before the First-tier Tribunal.
2. This appeal was listed for a CMRH on 17 March 2022 following my decision dated 1 February 2022 in which I found that the First-tier Tribunal had erred in law in allowing the appellant's appeal against a decision to deport him as an EEA national under the Immigration (European Economic Area) Regulations 2016 (SI 2016/1052 as amended).

3. The appellant did not attend the CMRH. He had also not attended the earlier error of law hearing. I was satisfied that he had been given notice of the CMRH at the address held by the UT and Home Office as his bail address. In these circumstances, I considered it in the interest of justice to continue with the CMRH in his absence.
4. I raised with Ms Rushforth the future conduct of the appeal, in particular the reservation in my error of law decision that the appeal might appropriately be remitted to the First-tier Tribunal to remake the decision in view of the possibility that, if the appellant engaged with the appeal process, as time had moved on since the earlier FtT hearing in July 2019 there might well be further updating oral or other evidence from his parents who had previously given oral evidence. The respondent also has further evidence, albeit in written form, concerning more recent offending which she wishes to rely upon. Ms Rushforth took, essentially, a neutral stance though she pointed out that the appeal should be heard as soon as possible as it had been delayed by circumstances for a period of time.
5. In all the circumstances, and having regard to para 7.2 of the Senior President's Practice Statement, I am satisfied that the proper disposal of the appeal is that it is remitted to the First-tier tribunal to remake the decision.
6. In re-making the decision, Judge Frazer's findings (and the evidence set out by her) at paras 14-20 of her decision are preserved. This includes, as I found at [30] of my error of law decision, her finding at para 20 that the appellant's offending (then relied upon) represents a "genuine, present and sufficiently serious" threat to a fundamental interest of society. Her findings in relation to proportionality at paras 21-26 are not preserved.
7. In reaching a decision on remittal, the judge will, of course, take into account the up-to-date evidence whether from the appellant or the respondent, the latter relating to further offending since Judge Frazer's decision.

Decision

8. The decision of the First-tier Tribunal to allow the appellant's appeal under the Immigration (EEA) Regulations 2016 involved the making of an error of law and was set aside by my decision dated 1 February 2022.
9. **The appeal is remitted to the First-tier Tribunal** for the decision to be remade subject to what I say above in [6] above to be heard by a judge other than Judge Frazer.

Signed

Andrew Grubb

Judge of the Upper Tribunal

17 March 2022