



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DA/01254/2014

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 17 August 2015

Decision & Reasons Promulgated  
On 5 November 2015

Before

Upper Tribunal Judge Southern  
Upper Tribunal Judge Coker

Between

AURIMAS PRANAITIS

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms V. Easty of counsel, instructed by Kesar & Co, Solicitors  
For the Respondent: Ms S. Petterson, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, who is a citizen of Lithuania, has been granted permission to appeal against the decision of a panel of the First-tier Tribunal dismissing his appeal against a decision of the respondent made on 25 June 2014 that he should be deported on the basis that, as a consequence of his criminal offending, both in Lithuania and in the United Kingdom, he posed a genuine, present and sufficiently serious threat to the interests of public policy if he were allowed to remain in the United Kingdom.
2. In order to inform the discussion that follows it is helpful to set out at the outset the reasons given by the respondent for making the decision under challenge in these proceedings:

“On 2 February 2006 at the District Court of Kedainai region in Lithuania, you were convicted of robbery and were sentenced to 2 years’ imprisonment. Between 18 July 2005 and 6 May 2014 you have amassed 18 convictions for 29 offences. These include 18 theft and kindred offences, 9 offences relating to police/court/prisons, one offence against property and one firearm/shotgun/offensive weapons offence. The Secretary of State has considered the offences of which you have been convicted and your conduct, in accordance with regulation 21 of the Immigration (European Economic Area) Regulations 2006. She is satisfied that you would pose a genuine, present and sufficiently serious threat to the interests of public policy if you were to be allowed to remain in the United Kingdom and that your deportation is justified under regulation 21. She has therefore decided under regulation 19(3)(b) that you should be removed and an order made in accordance with regulation 24(3), requiring you to leave the United Kingdom and prohibiting you from re-entering while the order is in force. For the purpose of the order section 3(5)(a) of the Immigration Act 1997 will apply. The Secretary of State proposes to give directions for your removal to Lithuania, the country of which you are a national.”

3. Ms Easty, who appears for the appellant, pursues before the Upper Tribunal the following grounds of appeal against the decision of the First-tier Tribunal:
  - a. The First-tier Tribunal erred in their conclusion that the appellant had the benefit only of the lowest level of protection afforded by regulation 21 of the Immigration (EEA) Regulations 2006 (“the EEA regulations”);
  - b. Although the panel referred to regulation 21(6) of the EEA regulations, they failed to have regard to the matters identified by that regulation. As it was a mandatory requirement that they did so, that failure discloses also a material error of law;
  - c. It was an error of law for the panel not to have carried out a comparative assessment of the prospects of rehabilitation in Lithuania as opposed to the United Kingdom;
  - d. The panel erred in their finding that the appellant could not meet the requirements of paragraph 276ADE of the Immigration Rules and that there would not be an impermissible infringement of rights protected by Article 8 of the ECHR because they gave no reasons whatever for reaching that conclusion and failed to carry out any adequate assessment.
4. The relevant provisions of both the EEA regulations and the Directive they implement into domestic law, the Citizens’ Directive 2004/38 (“the Directive”) are annexed to this decision. For present purposes it is sufficient to note that the effect of these provisions is to provide three levels of protection against removal, depending upon the extent to which the EEA national has demonstrated becoming integrated into the United Kingdom as a result of continuous residence in the United Kingdom.
5. Thus, an EEA national cannot be removed on the grounds of public policy, public security or public health unless the threat his continued presence poses is “genuine,

present and sufficiently serious”, having taken into account the factors set out in regulation 21(5) and (6), which we examine in detail below.

6. The EEA regulations provide enhanced levels of protection against removal for EEA nationals who have become integrated in the host member state as a consequence of living for a sufficiently lengthy period of time in that member state. Thus, regulation 21(3) provides that an EEA national with a permanent right of residence, which is acquired as a consequence of completing five years’ continuous residence in accordance with the regulations, cannot be removed except upon *serious grounds* of public policy or public security. Regulation 21(4) provides the highest level of protection for an EEA national who has “resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision”. Such a person cannot be removed except upon *imperative grounds of public security*.
7. The appellant, both at the date of the decision and at the date of the hearing, had been residing in the United Kingdom for about seven years. During that period he committed a number of offences of theft from shops (offences that have been referred to as “shoplifting”) so that he could not point to a single continuous period of five years residence during which he had not served a prison sentence. That meant that he did not qualify for permanent residence. However, after deducting from his overall period or residence in the United Kingdom the periods spent in prison, he could demonstrate that he had spent an overall period residing in the United Kingdom in accordance with the EEA regulations of more than five years.
8. Before the First-tier Tribunal it was argued that, as the appellant had spent a total of more than five years residing in the United Kingdom after the periods spent in prison were deducted, therefore he could aggregate those periods before and after the prison sentences and so qualify for permanent residence. That argument was plainly wrong and the panel were clearly correct to reject it. Although Ms Easty, realistically, did not pursue that submission before the Upper Tribunal, she did advance a submission relating to the possibility of aggregating periods of residence before and after terms of imprisonment, not to qualify for permanent residence but to have access to the intermediate level of protection against removal. Therefore, it is necessary to be clear about the reasons why the first argument that she does not pursue is one that cannot succeed.
9. In *Nnamdi Onuekwere v SSHD* [2014] EUECJ C-378/12 the Court of Justice addressed these questions:
  - (1) In what circumstances, if any, will a period of imprisonment constitute legal residence for the purposes of the acquisition of a permanent right of residence under Article 16 of [Directive 2004/38]?
  - (2) If a period of imprisonment does not qualify as legal residence, is a person who has served a period of imprisonment permitted to aggregate periods of residence before and after his imprisonment for the purposes of calculating the period of five years needed to establish a permanent right of residence under [Directive 2004/38]?

The answer to the first question was delivered in uncompromising terms at paragraph 22 of the judgment:

“As is clear from the very terms and the purpose of Article 16(2) of Directive 2004/38, periods of imprisonment cannot be taken into consideration for the purposes of the acquisition of a right of permanent residence for the purpose of that provision.”

10. The answer to the second question was also a clear and unambiguous one. Having observed that the “condition of continuity of legal residence satisfies the integration requirement which is a precondition of the acquisition of the right of permanent residence” and that the imposition of a prison sentence is indicative of non-compliance with values expressed by the society of the host Member State in its criminal law:

“It follows that the answer to the second question is that Article 16(2) and (3) of Directive 2004/38 must be interpreted as meaning that continuity of residence is interrupted by periods of imprisonment in the host Member State...”

Thus entitlement to a right of permanent residence arises not just as a consequence of the passage of time spent in the host Member State. It is recognised that a person who has spent a continuous and uninterrupted period of five years residing in accordance with the regulations, that is, exercising Treaty rights, will have demonstrated something else, that being becoming integrated into the host state. On the other hand, a person who has not managed to accumulate a continuous period of five years residence in accordance with the regulations because he has demonstrated the very opposite of moving towards becoming integrated in the host state by the commission of criminal offences, has not demonstrated that he has become integrated. This reflects the ambition of recital 17 in the preamble to the Directive:

“Enjoyment of permanent residence by Union citizens who have chosen to settle long term in the host Member State would strengthen the feeling of Union citizenship and is a key element in promoting social cohesion, which is one of the fundamental objectives of the Union. A right of permanent residence should therefore be laid down for all Union citizens and their family members who have resided in the host Member State in compliance with the conditions laid down in this Directive during a continuous period of five years without becoming subject to an expulsion measure.”

11. When approaching the discussion concerning the levels of protection from deportation, it is important to keep in mind that there are two different concepts in play. One is a right to permanent residence as a result of becoming integrated in the host state as evidenced by meeting the requirements of regulation 15. The other is the proportionality of the proposed removal, given the extent to which integration has been demonstrated and the level of risk occasioned by the continued presence of the EEA national in the Member State.
12. The recognition of a right of permanent residence under the regulations is the recognition of a status of integration. It does more than certify a period of legal residence. Therefore an EEA national who has established that and who subsequently finds himself facing deportation as a consequence of criminal

offending is in a different position from such a person who can also demonstrate a total of five years residence in accordance with the regulations but not accumulated in one continuous period.

13. Although, therefore, Ms Easty accepts that the appellant did not qualify for permanent residence, she submits that, drawing upon the jurisprudence relating to access to the highest level of protection and applying, by analogy, the same approach to access to the intermediate level of protection, a person such as the appellant could access that intermediate level of protection by aggregating five years residence after deducting periods of imprisonment. Ms Petterson, who resists that interpretation, concurred with Ms Easty's observation that there appears to be no direct authority on the point.
14. It is, therefore, necessary to examine what is required to access the highest level of protection against deportation on the basis of ten years residence.
15. In *SSHD v MG* (C-400/12) the Court of Justice was concerned, *inter alia*, with the question of whether the ten years' residence demanded by Article 28 in order to have the benefit of the highest level of protection against deportation had to be continuous and unbroken, or whether it could comprise an overall period of residence punctuated by periods of imprisonment but amounting to ten years after periods of imprisonment had been deducted. The Court concluded that:

“... on a proper construction of Article 28(3)(a) of Directive 2004/38, the 10 year period of residence referred to in that provision must, in principle, be continuous and must be calculated by counting back from the date of the decision ordering the expulsion of the person concerned.”

But the Court went on to indicate that the absence of a continuous and unbroken period of 10 years residence did not necessarily disqualify a person from having the benefit of the highest level of protection:

“As for the question of the extent to which the non-continuous nature of the period of residence during the 10 years preceding the decision to expel the person concerned prevents him from enjoying enhanced protection, an overall assessment must be made of that person's situation on each occasion at the precise time when the question of expulsion arises (see to that effect, *Tsakouridis*, paragraph 32).

...

...Article 28(3) 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 the 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.”

16. The decision of the Court of Justice in *SSHD v MG* was considered by the Upper Tribunal in *MG (prison-Article 28(3)(a) of Citizens Directive) Portugal* [2014] UKUT 00392 (IAC). The Tribunal concluded that:

“The judgment should be understood as meaning that a period of imprisonment during those 10 years does not necessarily prevent a person from qualifying for enhanced protection if that person is sufficiently integrated. However, according to the same judgment, a period of imprisonment must have a negative impact in so far as establishing integration is concerned.”

17. We respectfully agree. Further, an understanding of the reasons for that explains also why the tension the Tribunal detected between the decisions of the Court of Justice in *Onuekwere* and *SSHD v MG* is in fact illusory.

18. The fact that different concepts are in play in respect of qualification for permanent residence and access to the highest level of protection against removal is evident from the vocabulary of the relevant provisions of the Directive and the EEA Regulations and the significance and purpose of the distinction is reinforced by the recitals to the Directive. Thus, in respect of qualification for permanent residence, Article 16 of the Directive requires that that the EEA national must have (emphasis added):

“... resided legally for a continuous period of five years...”

And the EEA regulations demand that the EEA national must have:

“... resided in the United Kingdom in accordance with these Regulations for a continuous period of five years...”

By contrast, in order to qualify for the highest level of protection against removal, Article 28(3)(a) of the Directive requires that the EEA national has

“... resided in the host Member State for the previous ten years...”

And regulation 21(4) of the EEA Regulations provide that a relevant decision may not be taken except on imperative grounds in respect of an EEA national who:

“has resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision”

19. It will be seen that in order to qualify for permanent residence there must be a continuous period of five years residence spent either “legally” or “in accordance with these regulations”, which continuous period of legal or regulation compliant residence is not achieved if punctuated by a prison sentence. On the other hand, in order to qualify for the highest level of protection against removal something quite different is required. The Directive requires a period of residence of at least ten years, and the EEA regulations demand a continuous period of residence and not that the period of residence be in accordance with the regulations. This explains the different approach taken by the Court of Justice in *Onuekwere* and *SSHD v MG*.

20. We can anticipate one argument that might be raised in criticism of this analysis. It is possible that a person might not qualify for permanent residence because he has never managed to accumulate five years continuous residence without committing an offence for which he was imprisoned, yet manages to remain in the United Kingdom for a sufficiently long time to accumulate at least ten years residence after discounting periods of imprisonment. That would mean that he would have access to the enhanced level of protection even though he had not first secured permanent residence.
21. We do not see this to raise any particular difficulty. As we have observed, provisions for permanent residence and for protection against removal are catering for different objectives. The rationale of the Directive and the EEA regulations is that its arrangements are founded upon the concept of integration. A person who has not managed to secure a right of permanent residence because he has been unable to avoid prison for more than five years at any one time but has, nonetheless, resided in the United Kingdom for ten years after deducting periods of imprisonment will be someone in respect of whom the respondent could have, but either did not or was not able to remove him at some early point in time. That person will be unable to demonstrate integration by completing the five year period without serving a prison sentence but will be able to show that his presence has been tolerated for ten years while exercising Treaty rights in the United Kingdom so that, applying the principle of proportionality as required by the Directive and so by the EEA Regulations also, a removal decision cannot be justified.
22. Having said that, the fact that a period of residence of ten years has been punctuated by periods of imprisonment is not irrelevant because this is one of the factors that falls to be considered under regulation 21(5) and (6).
23. It follows from this that the appellant is not entitled to the intermediate level of protection and the panel that dismissed his appeal made no error of law in applying only the basic level of protection provided by regulation 21.
24. The second ground pursued is that, although the panel referred to regulation 21(6) of the EEA regulations, they failed to have regard to them in reaching their decision. Of course, the provisions of regulation 21(5) also come into play. In the context of this appeal, the following matters were, therefore, of particular relevance:
  - a. The principle of proportionality;
  - b. Whether the personal conduct of the appellant meant that he continued to represent a genuine, present and sufficiently serious threat;
  - c. Recognition that the fact of the appellant having committed offences in the past did not of itself justify the removal decision;
  - d. The appellant's family and economic situation;
  - e. His length of residence in the United Kingdom;
  - f. The appellant's social and cultural integration into the United Kingdom and the extent of his links with Lithuania.

25. The judge recorded in the determination the relevant evidence relied upon by the appellant. At paragraph 15 he said this:

“(the appellant) accepted he had broken the law on many occasions but he saw crime as a way to survive. It was something he had grown up to know. He said he realises now that this way of life is not acceptable. So he is doing everything he can to become a respectable resident in the UK. He said that he will now stop committing crime if he is allowed to remain here. In the past, crime was all he knew because his parents moved to Germany when he was young and he became friends with people who led him into believing that crime was the only way to live.... The decision to deport him made him realise for the first time that the “stupid things he was doing” could have such an adverse effect on the rest of his life...”

26. The judge went on to record the appellant’s evidence of having been involved with a “dangerous gang of people” in Lithuania who had led him to be involved “in their gun crime”. The appellant’s evidence was that, having moved to the United Kingdom, his circumstances were entirely different. He has made many friends here and he has a sister and nephew who live here. Importantly, he had formed a close relationship with Ms Rebecca Hill, a British citizen with who he now lives. The judge noted his evidence about this relationship:

“He described her as an amazing woman who was able to forgive him for his past and who wanted to have a future with him. When he was in prison she stood by him and put up her own money to stand surety for him when he was released on immigration bail and agreed for him to live with her. They have cohabited... since he was released on immigration bail on 1 August 2014.”

27. The panel heard oral evidence from Ms Hill of which they said this:

“Since she and the appellant have been living together since his release from immigration detention he has proved to her that he is trustworthy and determined to prove that he is now an honest, law abiding citizen. He rarely stays out late and when he does they are together... She has introduced him to her friends and he has now built a new social group with people who have never been involved in crime. This has made the appellant feel ashamed of what he has done in the past and has given him inspiration to look up to these people and to be the good person that they all believe him to be. He has “traditional views on life” and wants to get married and provide for his family. He still has a lot to prove to her parents though, so he wants to gain their trust and acceptance for her hand in marriage. For this reason alone she believes the appellant will not offend again. She said he is her future and she could not see her life with anyone else...”

28. Ms Hill discovered that the appellant had a history of offending only after he was last convicted and imprisoned in January 2014. The evidence before the First-tier Tribunal was that Ms Hill could not move to Lithuania for a number of reasons. She has been employed by Barclays Bank PLC for about three years and has a continuing need for expensive treatment for a long standing health issue. She would need to work in Lithuania to fund that health treatment on a long term basis but would not be able to find employment because of the obstacles of both language and ill-health.



29. Having reviewed the appellant's history of offending, describing it as "truly appalling" and noted that since moving to the United Kingdom his offending has been as "a persistent shoplifter", the panel said:

"it is against this that we consider the evidence of Rebecca Hill who supports the appellant's evidence that he is now a changed man who would be a law abiding citizen if he is allowed to remain and someone who would never re-offend."

But concluded that:

"We cannot be satisfied on the evidence before us that there is no present, genuine and sufficiently serious threat to the interests of public policy."

That was because he had in the past committed offences of shoplifting even when in employment and he had not been deterred from committing offences by the sentences imposed for earlier ones. He had committed no fewer than sixteen offences over a period of four years. Although reminding themselves that a relevant decision cannot be solely based upon a person's previous convictions, the panel observed:

"The past, however, in a case like this, must surely indicate a risk of future offending..."

The panel went on to say:

"... there is one part of the decision letter we do not agree with. Whilst there is no evidence that the appellant has undertaken any rehabilitative work while in custody, it could not be expected because his prison sentences in the United Kingdom have been so short that it is unlikely that any rehabilitative work would have been undertaken with him.

We consider the prospect of rehabilitation in the United Kingdom is something to be viewed with pessimism. It is established that in applying Regulation 21 a decision maker must consider whether a decision to deport may prejudice the prospects of rehabilitation from offending in the host country and weigh that risk in the balance when assessing proportionality under Regulation 21 above. Apart from the opportunity to work and the appellant's relationship with Rebecca Hill there is no evidence of opportunities for rehabilitation in the United Kingdom."

On which basis the appeal was dismissed.

30. For the reasons that follow, we are satisfied that the panel fell into legal error.

31. First, as Ms Petterson accepted, although the panel correctly identified the prospects of rehabilitation as a significant issue to inform their decision, they carried out no comparative analysis of the prospects of rehabilitation in the United Kingdom as compared with in Lithuania. In *Essa (EEA: rehabilitation/integration)* [2013] UKUT 00316 (IAC) Blake J said, at paragraphs 33 and 34:

"It is only where rehabilitation is incomplete or uncertain that future prospects may play a role in the overall assessment. Here we must take our guidance from the Court of Justice in Tskouridis and the Court of Appeal in the present case remitting the matter to this Tribunal.

It is in the interests of the citizen, the host state and the Union itself for an offender to cease to offend. This is most likely to be the case with young offenders who commit a disproportionate number of offences, but many of whom will stop offending as they mature and comparatively few of whom go on to become hardened criminals and persistent recidivist offenders. We can exclude consideration of offenders beneath the age of 18 as EEA law will prevent their deportation save in the unusual event that it is in their own interest (Article 28 (3) (b) of the Citizens Directive).

If the very factors that contribute to his integration that assist in rehabilitation of such offenders (family ties and responsibilities, accommodation, education, training, employment, active membership of a community and the like) will assist in the completion

of a process of rehabilitation, then that can be a substantial factor in the balance. If the claimant cannot constitute a present threat when rehabilitated, and is well-advanced in rehabilitation in a host state where there is a substantial degree of integration, it may well very well be disproportionate to proceed to deportation."

32. This appellant has been, in the past, a prolific offender. There are two significant matters arising out of that. First, although he has continued to offend in the United Kingdom, before establishing his relationship with Ms Hill, the nature of his offending was significantly more serious in Lithuania than it has been in the United Kingdom. That is not to understate the seriousness of any offence of theft, even when given the description of "shoplifting", but to recognise that the threat posed by this individual was much more serious in Lithuania than it has been in the United Kingdom where he has shown no propensity to commit offences of violence or involving weapons or the threat of force. Secondly, the reason for that change in the pattern of offending is precisely because of the difference between the circumstance the appellant found himself in Lithuania and in the United Kingdom.
33. When one adds to that the impact upon the appellant of his relationship with Ms Hill and the evidence that indicated a real incentive for the appellant not to reoffend in the future, it is plain, on any view, that the prospects of rehabilitation are significantly better if the applicant remains here than if he returns to Lithuania.
34. That is not a complete answer to the question of whether the removal decision is in accordance with the regulations. The next step is to address the matters, identified above, that fall to be considered under the provisions of regulations 21(5) and (6).
35. As the removal decision cannot be founded upon a previous history of offending alone, and as the decision must be based exclusively on the personal conduct of the person concerned, so that deterrence of others plays no part, for this appellant to represent a genuine, present and sufficiently serious threat to public policy, there must be a real and sufficiently serious threat that he would re-offend. It is apparent that the conclusion of the panel that such a threat existed was founded entirely upon his history of previous offending, the panel observing that the appellants past record "must surely indicate a risk of future offending".

36. We are reinforced in that conclusion by the requirement of regulation 21(6) that provides, in mandatory terms, that the decision maker must take account, *inter alia*, of the person's family situation, which must include his relationship with the lady he is living with, and his length of residence and level of integration into the United Kingdom as well as the extent of his links with his country of origin which, on the evidence, were not in any way significant.
37. Drawing all of this together we reach the following conclusions. The First-tier Tribunal erred in law in failing to have proper regard to the considerations that they were required to have regard to; in founding their decision upon the appellant's previous criminal convictions without balancing that against his significantly changed circumstances and in failing to carry out a comparative assessment of the prospects of rehabilitation here as opposed to in Lithuania. We therefore set aside the decision of the First-tier Tribunal and will re-make it.
38. It is not necessary for us to review in detail all of the matters we have already set out. The appellant, as we have observed, is someone whose behaviour has been significantly affected by the circumstances in which he finds himself. In Lithuania he had little in the way of sound family support and nor did he have available to him a law-abiding and respectable social support network. Instead, he found himself in the company of persons disposed to commit serious crime and he became involved with that offending. His circumstances today are wholly different. We are satisfied that his expressed resolve to continue to live a law-abiding, useful and productive life while he develops further his family life with Ms Hill is sincere and genuine and, as time has gone on he has shown that this is something he is capable of achieving. He has every incentive to maintain that position and we see no reason at all why he should not continue to do so. Conversely, should he be removed to Lithuania, the reality of the situation is that Ms Hill will be unable to move there with him so that all of the positive influences in his life will be lost.
39. It follows from this that while the appellant remains in the United Kingdom there is no reason at all to doubt that the position will remain as it is at present.
40. For all of the reasons we have given, when giving effect to the principle of proportionality we conclude that weighing together all relevant considerations the appellant does not represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society and therefore substitute a decision to allow his appeal.
41. There was a further ground raised by the appellant which was that the appeal should have been allowed on the basis that the appellant met the requirements of paragraph 276ADE of the immigration rules. As we have allowed this appeal for other reasons it is necessary for us to say just that the ground as pleaded provides no basis in itself for allowing the appeal. If the removal decision were to stand, the private and family life asserted would be no basis upon which to displace it. As we have found that it does not, the question of interference in any rights protected by Article 8 of the ECHR simply does not arise.

Summary of decision

42. The First-tier Tribunal made an error of law material to the outcome of the appeal and the decision to dismiss the appeal is set aside.
43. We substitute a fresh decision to allow the appeal.

Signed



Date: 4 September 2015

Upper Tribunal Judge Southern

## ANNEX

Regulation 21 provides as follows:

- (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.
- (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.

Regulation 21 of the EEA regulations gives effect to Article 28 of the Citizens Directive 2004/38:

1. Before taking an expulsion decision on grounds of public policy or public security, the host Member State shall take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host Member State and the extent of his/her links with the country of origin.

2. The host Member State may not take an expulsion decision against Union citizens or their family members, irrespective of nationality, who have the right of permanent residence on its territory, except on serious grounds of public policy or public security.
3. An expulsion decision may not be taken against Union citizens, except if the decision is based on imperative grounds of public security, as defined by Member States, if they:
  - (a) have resided in the host Member State for the previous 10 years; or
  - (b) are a minor, except if the expulsion is necessary for the best interests of the child, as provided for in the United Nations Convention on the Rights of the Child of 20 November 1989.

Regulation 15 of the EEA regulations, so far as is relevant, provides as follows:

- 15.** – (1) The following persons 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;