



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DA/00064/2017

**THE IMMIGRATION ACTS**

Heard at Royal Courts of Justice  
On 12<sup>th</sup> February 2018

Decision & Reasons Promulgated  
On 26<sup>th</sup> April 2018

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR TITOS CASSIMO  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Mr J René, instructed by VLS Solicitors

For the Respondent: Mr E Tufan, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Portugal born on 16<sup>th</sup> October 1996 and he appealed against the decision of the respondent to make a deportation order dated 26<sup>th</sup> October 2016 in accordance with Regulation 21 of the Immigration (European Economic Area) Regulations 2006 on the basis that the appellant's removal was justified on the grounds of public policy, public security or public health. The appeal was allowed by the First-tier tribunal.

2. The background and criminal history for this appellant is that on 19<sup>th</sup> December 2012 he was remanded for battery and on 31<sup>st</sup> October 2013 he was sentenced to a youth rehabilitation order for robbery and battery. On 20<sup>th</sup> November 2015 he was sentenced to four years detention for conspiring to supply Class A drugs (heroin and cocaine) and failing to comply with a Youth Rehabilitation Order.
3. The Secretary of State appealed the First-tier Tribunal decision and at a hearing of 7<sup>th</sup> August 2017, I found an error of law in the decision of the First-tier Tribunal, on the basis that the judge had made contradictory findings and failed to take into account relevant evidence and, further made a misdirection of law. It was specifically submitted by the Secretary of State that there had been a substantial escalation in the seriousness of the appellant's offending and as such it was submitted that the judge had materially erred in law by failing correctly to analyse the threat posed by the appellant as assessed by the Probation Office. Not least under **MA (Pakistan) [2014] EWCA Civ 163** at paragraph 19 the court stated

*"a risk of 17% reoffending over a two year period is not, in my judgment in the context of deportation case, a matter which could be treated as insignificant. It is good reasons for supporting a decision to deport".*

However, the matter could not be dealt with at 7<sup>th</sup> August 2017 because I found that the appellant was not legally represented, and the matter was adjourned twice prior to the appellant having the opportunity to be represented.

4. Although the decision of the First-tier Tribunal was set aside, the judge made a finding that the appellant had not on the balance of probabilities acquired the right of permanent residence in the United Kingdom. This was because of the contradictory evidence, the lack of reliable supporting evidence and the absence of medical insurance. That finding was preserved and there was no challenge to that conclusion.
5. The appellant's parents were Mozambique nationals and his father had secured Portuguese nationality. As a result, the appellant had both Mozambique and Portuguese nationality. The appellant claimed to have entered the United Kingdom in 2009 although there was no documentary evidence to support that contention. The appellant maintained that he had never lived in Portugal and came to the United Kingdom to be with his brother, sister and aunt. He produced a letter from City Academy Norwich confirming that he attended there from 21<sup>st</sup> January 2010 to 22<sup>nd</sup> July 2011 and a letter from Great Yarmouth High School confirming that he was a student there from 8<sup>th</sup> November 2011 to 30 January 2013. In evidence before the First-tier Tribunal, the brother, in his letter, stated that the appellant came to the UK in 2011 which was found to conflict with the evidence from the school (attendance from 2010). The appellant was resident in the UK when he received his reprimand 19<sup>th</sup> December 2012 and on 3<sup>rd</sup> October 2013 when he was convicted of robbery and battery. He was remanded in custody on 5<sup>th</sup> February 2015 and detained thereafter until his release.

6. The appellant is therefore afforded the lowest level of protection under the Immigration (EEA) Regulations 2006.
7. At the hearing before me both representatives confirmed that the Immigration (EEA) Regulations 2006 did apply (rather than the 2016 regulations). I set out paragraphs 19(3), 21(5) and 21(6) of the Immigration (EEA) Regulations 2006:
19. – (3) *Subject to paragraphs (4) and (5), a person who has been admitted to, or acquired a right to reside in, the United Kingdom under these Regulations may be removed from the United Kingdom if –*
- (a) *he does not have or ceases to have a right to reside under these Regulations;*  
or
- (b) *he would otherwise be entitled to reside in the United Kingdom under these Regulations but the Secretary of State has decided that his removal is justified on the grounds of public policy, public security or public health in accordance with regulation 21.*
21. – (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.*
21. – (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.*
8. At the resumed hearing before me Mr René submitted, on behalf of the appellant, a skeleton argument and further documentation including a letter from the appellant's older sister Elisabeth De Cassimo dated 10<sup>th</sup> February 2018, a letter from Hugo De Almeda dated 10<sup>th</sup> February, a further witness statement from the appellant, a letter from Celso Almelda dated 8<sup>th</sup> February 2018, a letter from the Probation Service dated 9<sup>th</sup> February 2018 and a letter from the Probation Service dated 7<sup>th</sup> November 2017 and bank statements for the appellant.

9. The appellant attended and gave oral testimony and adopted his statement. He confirmed he was living with his elder sister in Manchester and had done so since his release in July 2017. He told the court that previously he was advised he was not allowed to work but another Probation Officer told him that he could, and consequently he started work four weeks ago. He was working for Kerry Fresh rearranging products on the pallets. He worked overnight between 10pm and 6am. He saw his Probation Officer once every two weeks and his Probation Officer was based in Oldham. Since the index offence in 2015 he explained that things had changed. Previously he had been living with his brother and he had never envisaged that he would go to prison. His brother's girlfriend or wife had assisted him but they had got divorced and support deteriorated. He had undertaken courses in prison such as drug awareness, self awareness and a course on violence and how to get off drugs. He had also undertaken academic courses such as English and Maths and level 2 health and safety. He confirmed that his girlfriend had visited him during his time in prison and she had been a girlfriend for four years. His aim was to finish college and to return to carpentry. His girlfriend was at university doing law at Cambridge (although I received no independent evidence of that).
10. Under cross-examination he confirmed he now lived with his sister and her four children aged 18, 12, 8 and 5. He confirmed that he was not currently enrolled at the City College in Norwich (as recorded in his statement) but had moved away. It was put to him that in Judge Trevaskis' determination there had been a reference to drugs found in his cell, but the appellant stated that he had never been presented with any form of formal adjudication in that regard. (Indeed, there was no such record in the papers produced to the Upper Tribunal). In contrast to the OASys Report he had been told that it was too early to do another report but he had produced a letter. He was asked in relation to the risk that he posed but there was not much he could say but that he had obtained a job, but he had no family in Portugal and his mother and father were in Mozambique. The Home Office suggested that it was proposed he would be removed to Portugal.
11. In his submissions Mr Tufan referred to the OASys Report which identified that the appellant posed a medium risk of harm and reoffending. The appellant had the lowest form of protection under the EEA Regulations and he currently posed a serious threat. He had never worked and had only obtained a job recently and was not even aware of what the date was that he obtained work. There was no evidence he was sufficiently integrated. His criminal activity had escalated from battery and robbery to being sentenced for four years for a drugs offence. I was referred to **MC (Essa principles recast) Portugal** [2015] UKUT 00520 (IAC) particularly paragraph 10 of the head note. As it stands the case of **Robinson v Secretary of State for the Home Department** [2018] EWCA Civ 85 concluded that the *Bouchereau* test is still valid such that the gravity of offence will be of a sufficiency to show someone who is not integrated.
12. Mr René by contrast made submissions that the appellant had given credible evidence and he referred me to the letter of the Probation Officer. It had only been six months since he had been released and it was too early to undertake a full OASys

Report but I was reminded of the test under Regulation 21 that the appellant had to be of a sufficiently serious and present threat and it must be looked at in relation to the index offence. The appellant had been to prison and learned the hard way. He was young, born in 1996 and was only 22 years he wanted to go back to education. He was staying with his sister. That he could not remember the date when he started work should not be held against him. He was integrated here, arrived in the UK at the age 13 and had been educated in the United Kingdom. Albeit that his criminality went against his integration his age was a factor and he was involved with the wrong crowd. The fact is that he had a level of integration which may be acceptable in Mozambique but he was not integrated into Portugal. He had never lived there although he could speak the language. The offences he had undertaken were connected to financial gain and he was now away from the area. The letter from the Probation Officer was a balanced and professional opinion and he was better placed to make such findings which showed the appellant in a positive light.

### Conclusions

13. Despite the reference in Mr René's submissions and skeleton argument there was no evidence to show that the appellant had lived in the United Kingdom permanently since 2009, he did not have permanent residence and I consider that the relevant test was that as enunciated in Regulation 21(5) and that "his personal conduct must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society". The fight against the organised dealing of narcotics must form part of public security and thus a fundamental interest of society and the Secretary of State was justified in concluding that supplying a Class A drug caused serious harm and was against the fundamental interests of society (as part of the public policy requirements).
14. I have set out the specific regulations above and it is clear that prior to taking any relevant decision on the grounds of public policy the decision maker must make a holistic proportionality assessment and take into account considerations such as age, state of health, family and economic situations and the person's length of residence in the United Kingdom. As set out in MC

*'In the absence of integration and a right of permanent residence, the future prospects of integration cannot be a weighty factor (Dumliauskas [44] and [54]). Even when such prospects have significant weight they are not a trump card, as what the Directive and the 2006 EEA Regulations require is a wide-ranging holistic assessment. Both recognise that the more serious the risk of reoffending, and the offences that a person may commit, the greater the right to interfere with the right of residence (Dumliauskas at [46] and [54]).*
15. There is a difficulty for this appellant in that he did not provide any evidence of his date of entry. He first came to the attention of the authorities in 2012 when he was reprimanded by Norfolk Constabulary for battery. No firm independent evidence such as educational evidence has been provided to show anything other than the appellant arrived between 2011 and 2012 and was promptly reprimanded on 19 December 2012 at the age of 16 for battery. Once again at the age of 16 he was

convicted of robbery and battery and remanded on conditional bail and sentenced to a supervision requirement. On 18<sup>th</sup> May 2015 he was convicted for conspiring to supply controlled Class A drugs (heroin and cocaine) and for failing to comply with a Youth Rehabilitation Order. He was sentenced to four years' detention at a young offenders' institution. The appellant was 18 years old when he was convicted of this offence albeit that he was arrested in 2015 at the age of 17.

16. The sentencing judge in his case remarked on 20<sup>th</sup> November 2015

*"It is ... a wicked trade with a high price paid in human misery ... Titos Cassimo, the nature and scale of your involvement is significant. You were an active street dealer but very much more than that. He used your premises for storage and packaging. He offered drugs for sale. He made transactions directly ... you have contact with other dealing bases. You both had crack cocaine and heroin in your home in large amount. .... Of aside from those drugs seized your family had spoken of your ongoing involvement with dugs. They have thrown away drugs that you had in your possession ... you failed to respond to your family's repeated efforts to cause you to desist. The phone attributable to you contained a number of texts offering to supply Class A".*

As can be seen from above the appellant has other convictions and from his OASys assessment on 24<sup>th</sup> October 2016 and the Offender Manager found that he posed a medium risk of harm to the public and on assessing it was found he had the potential to do serious harm: the offender manager found that although he posed a low risk of reoffending it was assessed as a medium risk of harm should he reoffend.

17. The reasons for refusal letter explained that the trade in illicit drugs has a severe and negative impact on society, and as the judge observed, it is responsible for a high price paid in human misery. Drug addiction affects not only the drug users themselves but also their families, friends and communities and addicts are often driven to commit "ancillary crimes in order to finance their habit". Further Class A drugs are categorised as such because they have the most serious detrimental impact on the health and wellbeing of those who become addicted to them.
18. As the sentencing remarks observed, the appellant appeared to have been well organised and played a significant role in the supply of the drugs as indicated by the sentence imposed. I take note of the case of **Robinson (Jamaica)** [2018] EWCA Civ 85 which confirmed that a serious offence can in itself indicate that there remains a threat to the requirements of public policy. **Robinson (Jamaica)** confirmed that a previous criminal conviction can only be taken into account in so far as it provides evidence of personal conduct constituting a "present threat to the requirements of public policy" but it is possible that past conduct "alone" may constitute a threat to the requirements of public policy. That might be in circumstances which involved a case generating 'deep public revulsion' such that the past conviction alone may serve to show a present threat to the requirements of public policy.
19. Without undermining the seriousness of the offence (which supplying Class A drugs must constitute) I am not persuaded that this is the kind of extreme case in which past conduct alone may suffice as constituting a present threat to the requirements of

public policy. That does not address the OASys report, however, which although from late 2016 is the current comprehensive assessment of his risk of reoffending. The offending can also indicate that integration has not taken place and the appellant was convicted as an adult when dealing and supplying Class A drugs. The convictions of this appellant indicated an established pattern of repeat offending within a relatively short period of time. This does not indicate integration. It is the index offence which indicates a very serious antisocial attitude towards the public and community.

20. I take into account the fact that the appellant was young when he committed the offences of robbery and battery and I note that the index offence took place when the appellant was nearly 18 that is between 29<sup>th</sup> April 2014 and 8<sup>th</sup> October 2014. The appellant has provided letters from family to indicate their support for him, but it is clear from the sentencing remarks of the judge that the family had spoken of his ongoing involvement with drugs and the efforts that they have made to cause him to stop but his resistance to that support.
21. I have considered the Probation Officer's reports of 7<sup>th</sup> November 2017 and 9<sup>th</sup> February 2018. The letter of 7<sup>th</sup> November 2017 stated "Mr Cassimo is currently complying and engaging well with probation, he reports on weekly supervision and has not missed any appointments, he will soon be reducing to fortnightly contact due to good conduct."

22. The Probation Officer stated

*"During supervision the focus has been on addressing his offending behaviour, work relating to victim awareness, drug awareness and his problem solving skills. So far Mr Cassimo has shown a good understanding of each of these areas, he confirmed that he has completed similar work while he was in custody and it is clear that he has retained the learning and able to understand how they impact on his behaviour to a good level. I have only known Mr Cassimo for three months I cannot yet assess how his maturity has changed since the time of the offence. However to date he has been making good progress with myself.*

*In regards to his education training and employment Mr Cassimo has been really interested in getting back into education to complete a carpentry course. Unfortunately there was some confusion around his eligibility to be able to return to education or employment. Mr Cassimo and myself both contacted his previous Home Office caseworker who relayed to us that Mr Cassimo was not eligible to seek education or employment. However recently Mr Cassimo has been transferred to a new caseworker who was informed us that Mr Cassimo is currently eligible to seek education, employment and any changes will depend on the result from the court case. Although Mr Cassimo is motivated to finish his carpentry course, he has not yet applied due to missing the start of the academic year ... It is best to follow an alternate direction in the short term and find employment to be able to help his sister financially and then start his course in the new academic year."*

23. This letter then commented on the terms of the risk assessment that the appellant currently was assessed as posing that being a medium risk of harm to the general public specifically drug users.

24. In the letter dated 9<sup>th</sup> February 2018 this repeated that

*“Mr Cassimo is currently assessed as medium risk to the general public specifically drug users. The nature of the risk was through the supplying and misuse of drugs. Individuals who obtain drugs through Mr Cassimo’s services may not be aware of the serious risk there are putting themselves at. By misusing drugs the nature of the risk is that of emotional, psychological and physical harm as well as financial loss. Mr Cassimo will also get risk to himself if he was to misuse the drugs he had possession of.”*

25. There were references in the papers which suggested that the appellant had been left by his brother without food and I note that the Probation Officer stated

*“The risk is likely to be greatest when Mr Cassimo’s need of financial gain mainly due to paying rent. However currently Mr Cassimo is residing at his sister’s accommodation in Oldham, this is a protective factor for Mr Cassimo, he has removed himself from the area where the index offence occurred and he has also detached himself from his associates. Mr Cassimo and his sister have a supportive relationship and the family environment is a positive factor for Mr Cassimo. Mr Cassimo’s risk would increase if he was to lose this accommodation with his sister and was left with no stable accommodation.”*

26. The letter written by this sister who explained that she could not come to court because of her young children being at school.

27. She also stated

*“Living here with me is just one of many decisions he has made since he has been released in order to better his life and move forward from the mistakes he made. My brother chose to distance himself from the area and people that were a bad influence thus leading him down the wrong path in committing them [sic] crimes and has been actively searching for jobs. Attending meetings at the Job Centre, putting together a CV and calling companies asking for employment as well as opening up a bank account to try and get himself back on his feet and ready to build a new life. He secured himself employment and with his wages he helps with bills around the house, treats his nieces and nephews and also saves money for future investments.”*

His sister then proceeded to state that having young children in the house would not lead her to welcome him if she thought he would return to his old ways but she considered that he has “shown so much grown and maturity since his release. I really believe that he has left the past in the past”. She also detailed how the appellant would assist with taking the children to school in the morning and bringing them home as well as attending school meetings.

28. The appellant speaks Portuguese. I have identified that the appellant was born in Mozambique where Portuguese is the official language. There was no evidence that he had spent any time in Portugal or would be accustomed to the culture there and I



accept that he would have no-one to support him on the basis that it was his father who acquired Portuguese nationality. There was, however, no evidence to show that he would be unable to relocate to Portugal. I do consider that he is a healthy adult male with the ability to find work. At present he is involved in unskilled labour. There was no evidence that he would not be able to attend college in Portugal.

29. Since his time in the United Kingdom he has secured a girlfriend, but they do not live together, and she has not in fact been a protective factor. His serious offence and continued offending indicate that he has not integrated.
30. The Secretary of State is proposing to remove the appellant to Portugal where he states he has no contacts at all and as he states "all my friends are here and all the family I am still in touch with are here". On the other hand, the appellant's difficulties were said, in part, to be the company he kept, and I note that the appellant has already removed himself from the immediate area and those friends which have a bad influence on him. He has already thus relocated. The appellant states clearly that he was mixing with the wrong crowd when he was younger which influenced his decisions. His friends, as he admits, have been a poor influence rather than enhancing any contribution of his to society, and have not prevented his offending which is at odds with integration. He has confirmed that during his sentence he completed various courses including drug awareness, victim awareness, self awareness, painting and decorating, health and safety, retail market, level 2 in English and Maths, BICS cleaning level 2 and construction level 1. He also gave evidence during his court appearance that he was a unit cleaner. Albeit that there was a reference in the First-tier Tribunal decision of drugs being found in his cell, there was in fact no evidence of those findings within the papers and no evidence of any adjudication and the appellant categorically denied this.
31. Despite the lack of integration some, albeit limited, weight must be given to the concept of rehabilitation. The Home Office proposed to remove him to Portugal and I specifically note at the head note of MC that gauging such prospects of rehabilitation requires assessing their relative prospects of rehabilitation in the host Member State compared with the Member State of origin but "in the absence of evidence it is not to be assumed that the prospects are materially different in that other Member State (Dumliauskas)". Referring to MC, in the absence of integration and a right of permanent residence, the future prospects of rehabilitation cannot be a weighty factor. *'Mere capability of rehabilitation is not to be equated with reasonable prospect of rehabilitation'*.
32. The Probation Office confirmed that the appellant and his sister had a supportive relationship and that *"the family environment is a positive factor for Mr Cassimo. Mr Cassimo's risk would increase if he was to lose this accommodation with his sister and was left with no stable accommodation"*.
33. The Probation Officer found that the appellant was showing good progress with probation and was complying and engaging well and was currently showing evidence that he was willing to progress and lead a pro-social life. This would

continue to be monitored throughout the rest of his sentence. At present the appellant is able to financially support himself, he is thus capable of work, and has been cared for by his sister but the appellant has committed a serious criminal offence of supplying drugs and the reports indicated that he would continue to remain a risk. There has been improvement in his personal circumstances as witnessed by the Probation Officer report. The appellant is on a licence which will expire on 5<sup>th</sup> February 2019. That will not however prevent reoffending. The professional assessment of risk posed by the appellant was upon his release. His personal circumstances, which have influenced that risk are said to have altered since that assessment and I take into account the Probation Officer's guarded comments in that regard. Although his sister had removed him from Norwich to her own family home, his brother and sister clearly failed to prevent him from committing serious crimes previously, despite reference in the papers to their previous efforts. The appellant has now secured employment albeit of a fairly recent nature although I accept on the strength of the evidence from the Probation Officer that the appellant was initially advised that he was not able to work. There were bank accounts showing that the appellant has indeed been paid for his employment.

34. The OASys assessment showed that the risk of reoffending was linked to accommodation, ETE, finance and lifestyle and associates and drug misuse. His probability of proven reoffending over the two-year period had a 42% chance and categorised as low. The probability of proven non-violent reoffending, however, was assessed, however, as 45% in the two-year period which was medium. I take into account that, as I have identified, this appellant conducted his criminal offending when he was just under the age of 18 albeit he was convicted as an adult and that he now has a stable accommodation, support from his sister and has relocated away from his associates and has secured himself employment. There has, however, been no formal reassessment of his risk of reoffending at present, although the Probation Officer most recently stated, he is showing good progress and is complying and engaging well and will lead a pro-social life. The most recent was not a comprehensive report and expressed in understandably reticent terms. Essentially he is at medium risk of reoffending.
35. Should the appellant be removed to Portugal those protective factors will be removed. Despite him undertaking very recent work there was little evidence of rehabilitation that the appellant had commenced, and I am not persuaded that, when afforded the lowest level of protection from deportation, that rehabilitation is a very significant factor.
36. No evidence was put before me to indicate very significant difficulties for the appellant in Portugal. He can speak Portuguese, he is young fit and able and it will be open to him to find work should he wish to in Portugal. He has not spent the majority of his life in the UK and no doubt his family can support him financially whilst he establishes himself in Portugal. On balance I find that he does represent a genuine present and sufficiently serious threat to fundamental interests such that he should be removed under the EEA Regulations. As such the decision to remove him to Portugal is justified in all the circumstances.

37. The appellant has established a private life in the United Kingdom since his entry in 2011/2012 and his removal would constitute an interference in his private life. Although he has a girlfriend they do not live together, and I am not persuaded that he has established a family life with his sister with whom he has only been living for a short period. He is financially supporting himself although she provides accommodation. The Immigration Rules specifically paragraph A398 to 399D reflect the position taken by the Secretary of State when considering an Article 8 claim from a person liable to deportation although they do not strictly apply to the appellant as an EEA national, but they are a guide only to human rights considerations. Further considerations set by parliament are to be found in Section 117 of the Nationality Immigration and Asylum Act 2002. The appellant has been convicted of an offence for which he was imprisoned for four years and although his offending was when he was on the brink of adulthood, his deportation is considered to be conducive to the public good. As set out in the decision letter the appellant has received a reprimand and two convictions for five serious offences. He offended almost as soon as he entered the UK. I have reviewed all the evidence provided by the appellant but do not find any compelling circumstances such that he should not be removed. Even his length of residence in the UK was not supported with evidence. He is fit and able to work and can speak Portuguese. He can continue to stay in contact with his family via modern methods. Nothing placed before me persuades me that the decision to remove him would prejudice his Article 8 rights in a sufficiently serious manner to allow the appeal. The Secretary of State has justified any such breach of his human rights.

**Notice of Decision**

I dismiss the appeal under the EEA Regulations and on Human Rights grounds.

No anonymity direction is made.

Signed *Helen Rimmington*

Date 29<sup>th</sup> March 2018

Upper Tribunal Judge Rimmington

**TO THE RESPONDENT**  
**FEE AWARD**

No fee is paid or payable and therefore there is no fee award

Signed *Helen Rimmington*

Date 29<sup>th</sup> March 2018

Upper Tribunal Judge Rimmington