Upper Tribunal

(Immigration and Asylum Chamber) **Appeal number: DA/00347/2018 (V)**

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC	**Decision & Reasons Promulgated**
On 20 November 2020	**On 1 December 2020**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

KM

(ANONYMITY ORDER MADE)

Respondent

For the appellant: Mr C Bates, Senior Presenting Officer,

For the Respondent: Mr S Kerr of counsel instructed by Karis Solicitors Ltd

DECISION AND REASONS (V)

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. At the conclusion of the hearing I reserved my decision, which I now give. The order made is described at the end of these reasons.

1. Although the Secretary of State has brought this appeal, to avoid confusion I have referred below to the parties as they were at the First-tier Tribunal appeal hearing.

2. The Secretary of State has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 3.12.19, allowing the appellant's appeal against the decision to deport him, dated 8.5.18, supplemented by the letter of 24.7.19.

3. At [43] of the impugned decision, the First-tier Tribunal found that the appellant did not pose a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. At [46] the judge found the deportation disproportionate. The appeal was, therefore, allowed.

4. The grounds of application for permission to appeal argued that the First-tier Tribunal Judge made a material misdirection in failing to acknowledge that past conduct is a key consideration carrying weight in the assessment of future risk and in failing to consider the seriousness of the consequences of reoffending for which the appellant has shown a propensity. It was also argued that the finding that the appellant was rehabilitated was inadequately reasoned.

5. The matter came before me for consideration of the error of law issue at a remote hearing at Manchester CJC on 21.7.20. For the reasons set out in my decision promulgated on 10.8.20, I found an error of law in the making of the decision of the First-tier Tribunal, requiring the decision to be set aside and remade in the Upper Tribunal. In doing so, I granted leave to the appellant to adduce further evidence limited to his personal and family circumstances, including as to his rehabilitation.

6. I also agreed with the representatives at the error of law hearing that it would be appropriate to preserve at least some of the findings of the First-tier Tribunal. Following discussion, I agreed that the findings at [31(a) to (e)] of the decision of the First-tier Tribunal should be preserved, together with the concession noted at [37] of the decision that the claimant is socially and culturally integrated in the UK.

7. There was an abortive attempt to hold this remote hearing on 27.8.20 but Mr Kerr had been sent the wrong time of invitation to the Skype hearing and was

not available when the case was listed. This only became apparent during investigations on the day of the hearing. In consequence, the hearing was relisted before me on 20.11.20.

8. The Tribunal has received the appellant's further bundle of evidence and yesterday received the letter of 23.9.20 from the Senior Probation Officer. I also have the appellant's original bundle prepared for the First-tier Tribunal appeal hearing and Mr Kerr's skeleton argument relied on at the error of law hearing.

9. Before reaching my findings in remaking the decision I have carefully considered and taken into account all documents and other evidence, oral and documentary, now available to the Upper Tribunal, considered in the light of the evidence taken in the round, the preserved findings set out below, and the oral submissions made to me by both representatives. This applies whether or not particular items of evidence are specifically referenced below.

10. At the remote hearing, the appellant gave oral evidence relying on his original witness statement of 19.11.19 and was cross-examined by Mr Bates. There was no other oral evidence and the remainder of the hearing proceeded by way of oral submissions of the two representatives.

Relevant Background

11. The relevant background can be summarised as follows. The claimant first entered the UK in 1999, claiming asylum with false personal details as a citizen of Kosovo. That claim was refused in 2003. He must have left the UK at some stage, as he re-entered the UK in 2005 under his own name and in possession of an EEA Family Permit for marriage. The marriage took place in 2006 and he was subsequently issued with a Residence Card valid to 2012. Although he divorced his wife in 2012, he was granted a further Residence Card valid to 2017, on the basis of a retained right of residence. In 2016 he was issued with a Permanent Residence Card, valid to 2026.

12. In April 2015, the claimant married an Albanian national in Albania. Their child was born in 2014. He illegally smuggled his wife and child into the UK in July 2015.

13. In addition to his poor immigration behaviour, the appellant has an antecedent criminal history going back to 2002 and involving a total of four appearances before the criminal courts. In 2016, he was arrested and prosecuted for offences of possession with intent to supply of Class A controlled drugs, namely Cocaine. An offence to which he pleaded not guilty and only changed his plea on the day of trial, resulting in limited credit for his plea. In November of that year, he was sentenced to a term of 4 years' imprisonment. He appealed neither conviction nor sentence.

14. In December 2016 the appellant was notified that the Secretary of State intended to make a deportation order against him on grounds of public policy/public security, pursuant to Regulations 23(6)(b) and 27 of the Immigration (EEA) Regulations 2016. After considering the claimant's representations against deportation, the Secretary of State issued the decision of 8.5.18 to make a deportation order. He appealed that decision to the First-tier Tribunal.

15. In the meantime, the appellant's wife and first child were granted asylum on 15.2.19, and a further child was born in the UK in April 2019.

The Law

16. The relevant parts of Regulation 27 provide:

> ***"Decisions taken on grounds of public policy, public security and public health***
>
> **27.**- *(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 right of permanent residence under regulation 15 except on serious grounds of public policy and 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 in the best interests of the person concerned, 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(**17**).*
>
> *(5) The public policy and public security requirements of the United Kingdom include restricting rights otherwise conferred by these Regulations in order to protect the fundamental interests of society, and where a relevant decision is taken on grounds of public policy or public security it must also 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 must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, taking into account past conduct of the person and that the threat does not need to be imminent;*

(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;

(f) the decision may be taken on preventative grounds, even in the absence of a previous criminal conviction, provided the grounds are specific to the person.

(6) Before taking a relevant decision on the grounds of public policy and public security in relation to a person ("P") 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 P, P's length of residence in the United Kingdom, P's social and cultural integration into the United Kingdom and the extent of P's links with P's country of origin. …

(8) A court or tribunal considering whether the requirements of this regulation are met must (in particular) have regard to the considerations contained in Schedule 1 (considerations of public policy, public security and the fundamental interests of society etc.)."

17. Schedule 1 provides:

"Considerations of public policy and public security

1. *The EU Treaties do not impose a uniform scale of public policy or public security values: member States enjoy considerable discretion, acting within the parameters set by the EU Treaties, applied where relevant by the EEA agreement, to define their own standards of public policy and public security, for purposes tailored to their individual contexts, from time to time.*

Application of paragraph 1 to the United Kingdom

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.*

6. *It is consistent with public policy and public security requirements in the United Kingdom that EEA decisions may be taken in order to refuse, terminate or withdraw any right otherwise conferred by these Regulations in the case of abuse of rights or fraud, including –*

(a) entering, attempting to enter or assisting another person to enter or to attempt to enter, a marriage, civil partnership or durable partnership of convenience; or

(b) fraudulently obtaining or attempting to obtain, or assisting another to obtain or to attempt to obtain, a right to reside under these Regulations.

The fundamental interests of society

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);

(i) protecting the rights and freedoms of others, particularly from exploitation and trafficking;

(j) protecting the public;

(k) acting in the best interests of a child (including where doing so entails refusing a child admission to the United Kingdom, or otherwise taking an EEA decision against a child);

(l) countering terrorism and extremism and protecting shared values."

Level of Protection

18. Pursuant to the Regulations, the claimant may be removed from the UK if his removal is justified on grounds of public policy, public security or public health. The respondent relies on both public policy and public security grounds. As the claimant had Permanent Residence status, pursuant to Regulation 27 a decision may not be taken against him except on "serious grounds" of public policy or public security, which is the medium level of protection. As the respondent noted in the refusal decision, imperative grounds are not available to a non-EEA national family member.

19. Pursuant to Regulation 27(5)(c), the appellant must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Other requirements of the Regulations include that the decision must also be proportionate to the circumstances, including the length of residence, his social and cultural integration in the UK, the extent of links to his home country of Albania, and take account of the various considerations set out in Regulation 27 and Schedule 1.

20. I confirm that I have given careful consideration to all of the relevant considerations before reaching my findings and conclusions.

Preserved Findings

21. The respondent did not challenge that the appellant was socially and culturally integrated in the UK, which is an important factor in the appellant's favour. I proceed on this basis, though in the light of paragraph 4 of Schedule 1 the weight to be given to that integration is a matter requiring some careful consideration, given the commission of criminal acts, his time in prison, and other acts which may be regarded as affecting the fundamental interests of society. I have addressed this further below.

22. At [31(a) to (e)] of the decision the judge made a number of findings in the appellant's favour, which I have agreed to preserve as not infected by the errors of law disclosed in the making of the decision of the First-tier Tribunal. I take all of these into account in my decision-making.

23. In summary, I preserve:

    a. That the appellant was contrite and accepted responsibility for his offending;

    b. That his probation report is wholly supportive and he is assessed as being a low risk of re-offending and of being a danger to the public;

c. That his wife and two children are supportive of him;

d. That he is committed to his family and has a caring, loving relationship with them;

e. His wife is a positive influence and was unaware of his offending;

f. The judge also accepted the evidence of the supporting witness Mr Malik, who described the appellant as a committed family man who wishes to turn his life around to support his wife and two children.

Evidential Assessment

24. I have taken account of all the evidence in the round, including both that which was before the First-tier Tribunal and led to the preserved findings set out above, and the more recent evidence put before the Upper Tribunal.

25. The more recent evidence of the appellant's personal circumstances included a statement from Mr Malik, who was a supporting witness in the previous appeal hearing, and who confirms that he has found the appellant extremely reliable, honest, hard working, loyal, and of great integrity. Mr Malik was not called as an oral witness in the Upper Tribunal and his evidence could not be challenged. To that extent I can place only limited reliance on the evidence. In any event, I find that Mr Malik's glowing testimonial is rather undermined by the appellant's criminal and poor immigration history, including his 1999 asylum claim using false details claiming to be a citizen of Kosovo, and the unlawful smuggling of his wife and child into the UK. It is not clear how involved Mr Malik has been in the appellant's life, as he apparently lost touch with the appellant before his last conviction in 2016, and the extent of his current involvement remains obscure, so that the relevance of the evidence is somewhat limited. In his own evidence, the appellant accepted that he lost contact with Mr Malik around 2006-2007 and only re-established contact in about 2016, whilst serving his prison sentence. The appellant also confirmed that Mr Malik was "not at all" aware of his previous convictions. The appellant said that he was embarrassed to make contact with him. However, Mr Malik purported to be aware that the appellant has recently started his own business and claims to have used his services, though no supporting documentation was provided to confirm that. It follows from the above that limited weight can be given to Mr Malik's evidence.

26. In relation to the claimed business the appellant has started, I find the evidence inadequate and lacking. The HMRC, Companies House, banking, and other business information in the new bundle tends to support the claim that the appellant started a plastering business around July 2020 and that he allegedly provides plastering services. However, in addition to the concerns about the work allegedly done for Mr Malik, I have serious misgivings about the new

documentation relating to the business and relied on by the appellant as evidence of rehabilitation.

27. I take into account the appellant's explanation that things have been difficult during the Covid-19 pandemic. However, whilst he has produced just two supposed invoices for plastering work done, the bank statements he has also produced do not show the payment for those invoices were made into his bank account, even though he said in evidence that payment was made to his bank account.

28. The first invoice is computer-printed under the appellant's incorporated business name and purports to invoice for work completed by 4.7.20, the date of the invoice, in the sum of £300. To that sum has been added £60 in VAT, making the total bill £360. However, the invoice does not show that the appellant is VAT registered and his limited turnover does not require him to be registered. When I put this point to Mr Kerr, he could not advance any evidence that the appellant is VAT registered and did not seek to recall the appellant on the matter. It follows that there was no basis for the appellant to levy VAT on his invoice. It seems that either the document is a fabrication, or the appellant has dishonestly charged the customer VAT.

29. The second invoice, dated 30.7.20 is in an entirely different format, handwritten on a pro-forma sheet. Whilst it says in the first-person, "I have finished all the plastering on..." (address provided), and the appellant asserts that he did the plastering, he denies writing out the invoice. Of greater concern and the subject of cross-examination is the peculiar detail of the invoice which sets out the value of work done as £8,000 but that 20% tax was deducted in the sum of £1,600, leaving a net bill of £6,400. The appellant insisted that the net sum had been paid into his bank account but has produced no bank statement to confirm that. Neither could he explain why 20% tax had been deducted rather than added to the invoice. In his somewhat leading re-examination, Mr Kerr suggested to the appellant that the explanation was that he was working under the Construction Industry Scheme (CIS), which might have explained his working as a sub-contractor to another business which pays his tax. However, the appellant did not know what this was and there is no evidence that supports this explanation.

30. In light of the matters set out above, I found the documents in support of the claim that the appellant has started and been engaged in a plastering business entirely unreliable so that I am unable to accept that he has genuinely engaged in any such business or earned any genuine income from such activity. In summary, the evidence was woefully inadequate to support the claim that he has rehabilitated by starting a law-abiding business.

31. In his oral evidence the appellant repeated the assertion that he committed the drug dealing offences in order to pay off a £12,000 debt he had incurred to smugglers in payment for the illegal entry of his family to the UK. He said that he was in financial difficulties and that at the date of being caught by the police £6,000 of that debt remained outstanding. Mr Bates pointed out that although the appellant claimed that his Santander bank account would have shown that he was in financial difficulties, which account he claims has now been closed, he has provided only limited bank statements none of which show financial difficulties, has not evidenced the source of deposits into the account, and has made no apparent effort to obtain Santander evidence relating to his previous account to support the claim that he was previously in financial difficulties. These were all matters perfectly capable of resolution by the taking of reasonable steps to obtain the evidence.

32. Whilst he claims in his witness statement that he now has no debt, the appellant has produced no evidence or explanation as to how the debt has or could have been discharged, particularly since he was given a lengthy prison sentence and any lawful income since release must necessarily be limited. He also claims that he has no contact now with anyone he knew from the time he was involved with drugs, but Mr Bates pointed to a number of people shown to be visiting him in prison. He claimed these were friends, though none have provided statements in support. The evidence on this issue remains unclear and gives rise to doubt that the appellant is truly without financial debt or related difficulties which he claims led to becoming involved in drug dealing in order to discharge. This, together with inadequate evidence that he has turned over a new leaf by starting a business, must undermine the claim to rehabilitation and represent a continuing risk factor for the future.

33. A GP letter dated 6.6.18 confirms that the appellant's wife had suffering from post-natal depression in the past, requiring antidepressant medication and was referred to counselling. The further GP letter, dated 19.8.20, states that she has been diagnosed with low mood, anxiety and panic symptoms, recommenced on antidepressant medication and again been referred to counselling. The appellant confirmed in his oral evidence that no such counselling has yet started as she had been "busy with the children". Mr Bates pointed out that in questioning the appellant was unable to produce any evidence of the medication prescribed to his wife or that she was taking that medication. In short, the medical evidence is woefully inadequate to demonstrate any significant adverse effect of deportation to his wife's mental health. However, I readily accept that removal of the appellant is likely to have some adverse effect on his wife and children. However, the evidence demonstrates that during his lengthy imprisonment, with the help of friends and despite anxiety and depression, she managed to care for the children and herself. Whilst I give

weight to this issue in the proportionality assessment, that weight is necessarily limited.

34. I also reject as not credible the appellant's claim that he had always wanted to plead guilty to the drugs offence, and only pleaded not guilty because his solicitor advised against admitting his guilt. No evidential support for this assertion has been produced when it could reasonably have been obtained from his former representatives. In assessing this factor and the reliability generally of the appellant's assertions, I have formed the overall view that the appellant has a rather loose commitment to the truth. In particular, I note his behaviour as outlined herein has demonstrated a number of aspects of being either dishonest or at the very least untruthful. This includes his insurance fraud, his false asylum claim, the smuggling of his family, and the dubious invoicing for his purported business, addressed above.

35. I confirm that I have taken into account all of the above, together with the evidence assessed in the context of the whole, including the evidence in the appellant's bundle prepared for the First-tier Tribunal appeal hearing and the preserved findings.

36. Regulation 27(6) requires me to take account of considerations relating to the appellant, such as age, state of health, family and economic situation, length of residence, his social and cultural integration, and links to his country of origin. I have assessed these factors below.

Are there Serious Grounds of Public Policy or Public Security?

37. In Tsakouridis C-145/09, the European Court found that the fight against crime in connection with dealing in narcotics as part of an organised group is capable of being covered by the concept of both 'imperative grounds of public security' and 'serious grounds of public policy or public security.' Although the First-tier Tribunal Judge omitted to take into account the devastating effect on society of organised drug-dealing, I must do so. I am satisfied that the nature of the offending behaviour was serious and one likely to have devastating and dangerous consequences for the general public. The offence was unarguably serious, as amply demonstrated by the term of 4 years' immediate imprisonment. To describe his last offence in terms as a 'one-off' would be to underestimate the seriousness of the offending behaviour.

38. Considering the seriousness of the criminal history in line with Kamki [2017] EWCA Civ 1715, I accept the respondent's argument that the repeat offending and escalation of that offending is itself strongly indicative of a propensity to reoffend. On the evidence, I find that there was an escalation in offending which demonstrated a significant propensity to offend against the norms of

society and which cannot be ignored. That offending also undermines the factors in favour of the appellant's social and cultural integration. These considerations are highly relevant to the weight to be given to evidence of integration and the threat/risk assessment.

39. Also highly relevant are the considerations in Schedule 1, including maintaining public confidence in the ability of the relevant authorities to take action, and tackling offences likely to cause harm to society where there is wider societal harm, such as offences related to the misuse of drugs. Drug-dealing offences cause serious harm to health of those addicted and to the welfare of society as a whole. There are knock-on consequences as members of society and businesses become victims of further crimes committed by drug addicts to fund their expensive habits. The effects of dealing in illicit drugs on individuals, families, communities and the society of the UK is devastating. Organised dealing in Class A controlled drugs is a scourge on society in the UK. Even if he is the family member of an EEA national, without the ability to take immigration action against a non-British citizen such as the appellant who has committed very serious criminal offences, the confidence of the public would undoubtedly be undermined.

40. In the premises, and for the reasons stated, I am satisfied that on the facts of this case there are serious grounds of both public policy and public security.

Does the Appellant Represent a Genuine, Present and Sufficiently Serious Threat?

41. I take into account Mr Kerr's submissions which whilst accepting that any threat need not be imminent, were to the effect the evidence of rehabilitation is such that the risk is now so remote as to be unpredictable.

42. Pursuant to paragraph [3] of Schedule 1, "the longer the sentence, or the more numerous the convictions, the greater the likelihood that the individual's continued presence in the UK represents a genuine, present and sufficiently serious threat affecting of the fundamental interests of society". The sentence of 4 years is significant. The length of his incarceration reflects the risk the appellant and his particular offending presents to society. Also to be taken into account is, as referenced above, the seriousness of the consequences of any reoffending, including a propensity to reoffend arising from the nature of the drug-dealing conviction, and the devastating effect on society of drug-dealing. Whilst the appellant is described as being of low risk of both reoffending and being a danger to the public, any return to such offending can have devastating and dangerous consequences for the public. As stated, past conduct is a strong indication of future risk. This risk, even if assessed as low by the appellant's probation officer, cannot be ignored in the threat assessment. In this regard, I note that there is no updated assessment from the probation officer, despite the

recent letter of 23.9.20, which states little other than that his licence has been completed without adverse incident.

43. In assessing whether the appellant represented a genuine, present and sufficiently serious threat to one or more of the fundamental interests of society, I have previously found that the First-tier Tribunal Judge erred by omitting to address and take into account the escalation in offending behaviour represented by the index drug-dealing conviction, apparently considering the offence a 'one-off'. I must take these factors into account. In assessing the threat, I also note that Regulation 27(5)(c) provides that to be taken into account is the appellant's past conduct and that the future threat need not be imminent.

Rehabilitation

44. Relevant to the threat assessment is the issue of rehabilitation. The respondent argues that a relatively short period out of prison whilst on licence does not demonstrate that the appellant is rehabilitated. In this regard, I have to bear in mind the way in which the Regulations consider rehabilitation and in particular take into account of the consideration at paragraph [5] of Schedule 1: that the removal from the UK of 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.*"

45. Whilst the relevance is to the overall proportionality of the decision, the reference is to 'substantive evidence' and in particular, but not exclusively, evidence that appellant has 'successfully reformed or rehabilitated.' Whilst challenging the conclusion that the appellant was rehabilitated, the respondent did not challenge the evidence on that issue relied on by the appellant. In my grant of permission, I considered the judge's conclusion that the appellant is rehabilitated questionable. However, in my error of law decision, I concluded that on the available evidence and for the reasons set out in the decision that, although a different judge may reach a different conclusion given the offending history and relatively short period out of prison on licence, it was nevertheless open to the First-tier Tribunal Judge to conclude at [31] of the decision that the appellant had "learnt the error of his ways and is rehabilitated." However, I did not preserve this finding and it remains open for reconsideration in the Upper Tribunal.

46. In relation to the issue of rehabilitation, the First-tier Tribunal Judge relied on:

    a. the fact that the appellant had been out in the community on licence for some 18 months;

    b. the positive probation report;

c. the appellant's attendance on remedial courses;

d. drug-testing;

e. the appellant's family support; and

f. the conclusion that the appellant had "learnt the error of his ways" and was contrite.

47. It is now the case that as of 26.6.20, the appellant's licence has expired and his period of probation completed. The recent Senior Probation Officer letter, dated 23.9.20, states that he complied throughout the probation period and attended all appointments. There were no enforcement issues, further offending, or risk escalation. The letter is very short and, whilst it is to the appellant's credit that he has successfully completed his licence and probation, little else of positive value is stated. In relation to rehabilitation, I accept that to the period since release is to be added the successful completion of his licence with no further offending. This is further positive evidence of rehabilitation, which I take fully into account, together with the low risk of harm and reoffending.

48. I also take into account that separating the appellant from his family may tend impede further rehabilitation as he would be without their positive influence and relieved of his responsibility for them. However, there is no reason why he could not complete rehabilitation in Albania. Neither it is necessarily the case that the family will be separated indefinitely. Whilst his wife cannot reasonably go to Albania, the appellant was challenged in cross-examination as to why he and his family could not meet in a third-country. He did not directly answer the question, stating only that his wife was scared to move from the UK.

49. Whilst I do not doubt that a person can be successfully rehabilitated over a shorter period than 18 months or two years, each case has to be considered on its merits. I have also to bear in mind that past conduct is indicative of future risk and that there was an escalation in the appellant's offending behaviour. In reality, taking into account all the matters addressed above, there is relatively little substantive evidence that the appellant has successfully reformed or rehabilitated. The evidence in support includes the factors relied on by the judge, referenced above, and the further extended period up until now, within which the appellant has not reoffended. However, that is not a factor of any great credit as not offending is no more than that which is expected of any resident of the UK. Further, other evidence that might support the claim of rehabilitation is somewhat lacking and does not, in my view, demonstrate a completed, successful, rehabilitation. For example, the supporting witness Mr Malik's evidence is rather limited, for the reasons I have set out above. In particular, the good character described did not dissuade the appellant from becoming a drug-dealer. Whilst the appellant has a genuine, subsisting and committed relationship to his wife and children, those positive factors did not

prevent him committing criminal offences and becoming a drug-dealer. If the appellant's licence period during which he was under supervision has now ceased, it has only recently done so. Whilst he may be on the path towards rehabilitation, I find that on the facts of this case, considered as a whole, it cannot be said that the appellant has demonstrated to any substantive degree that he has successfully reformed or rehabilitated. These findings are relevant to both the threat assessment and the proportionality balancing exercise, considered below.

50. I take all of those considerations into account in the appellant's favour and they are not to be undervalued, particularly the probation risk assessment. However, I have to bear in mind that the appellant was only released from prison in 2018 and for most of the past two years has been on licence and at risk of return. Licence is an intention on an offender's behaviour. He has spent a further period without that threat, a little under 6 months, which I also take into account.

51. Although the risk of reoffending was assessed as low, I am satisfied that there remains a threat and if the appellant were to reoffend by further drug-dealing, the likelihood of real harm is, in my view, considerable and not to be under-estimated.

Weight to be Given to Integration

52. Paragraph 2 of Schedule 1 provides that extensive familial or societal links with persons of the same nationality or language does not amount to integration and a significant degree of wider cultural integration must be present before a person may be regarded as integrated in the UK.

53. However, as stated above, the respondent did not challenge that in essence the appellant was socially and culturally integrated in the UK. However, as also referenced above, paragraph 4 of Schedule 1 directs that little weight is to be attached to integration if the alleged integrating links were formed at or around the same time as the commission of a criminal offence, "an act otherwise affecting the fundamental interests of society", and time spent in custody. Clearly the time during which the appellant's various criminal offences were committed, which is not insignificant, comes within this paragraph. As does his time in custody, for obvious reasons. In cross-examination, the appellant explained that his January 2016 conviction, which offence was committed over a period of time in 2015, was the fraudulent provision of a false address outside of London in order to obtain a lower insurance premium. Quite clearly, unlike his early motoring offences including driving with excess alcohol and an offence of criminal damage, this was a matter of dishonesty, undermining the motoring insurance system. I am also satisfied that the appellant's poor

immigration history, making a false asylum claim and smuggling his family into the UK, are acts which adversely affect the fundamental interests of society. It follows that the weight that can attach to his integration is necessarily limited but I accord such weight as I can in the circumstances.

54. In the premises, taking all factors into account in the balance including the low risk assessment and previous positive report of his probation officer, I am satisfied for the reasons set out herein that on the facts of this case the appellant continues to represent a genuine, present and sufficiently serious threat to one or more of the two fundamental interests of society relied on by the respondent.

Proportionality Balancing Exercise

55. In my error of law decision, I found that the First-tier Tribunal had engaged in unwarranted speculation as to the effect of the appellant's removal on his partner and children, when, as the judge noted, there was no evidence on that issue. This was relevant to and skewed the proportionality assessment. I have now received further evidence in the appellant's latest bundle, prepared for the remaking of the decision, all which I have taken into account, including that his wife previously suffered mental health issues and has recently been diagnosed with a recurrence of anxiety and depressive symptoms warranting the prescription of antidepressant medication and a referral for counselling.

56. I have taken into account the positive character reference of Mr Malik and other evidence in the appellant's bundles suggesting his integration in the UK. I remind myself of the preserved positive factors, including the genuine and subsisting family relationships and mutual support and positive influence. I also recognise that the appellant's deportation will have a negative effect on his family, including, potentially, to worsen his wife's depressive symptoms. However, it is the nature of the severe sanction of deportation that it separates family members; harsh effects almost inevitably follow. Sadly, that is entirely the responsibility of the appellant and the consequence of his serious offending behaviour whilst in this country with an entitlement to remain only as the former family member of an EEA national exercising Treaty rights in the UK (from a previous relationship). However, he has been here a lengthy period, and qualifies for permanent residence so that only strong grounds justify removal.

57. Whilst the appellant's family may not be able to return to Albania and they have the right to remain in the UK, it remains open for the appellant and his family to seek a third country in which to continue their family life. Devastating the consequences of separation may be, the mere fact of such separation does not justify setting aside the deportation order; otherwise few

deportations could ever take place. With every sympathy for the relatively minor mental health issues of the appellant's wife, there is nothing in the evidence to indicate that regaining full health is dependent on the appellant's continued presence, or that for any other reason his presence is necessary. She has access to appropriate medical care and other support for herself or her children will be available from state services.

58. I have also taken into account as a primary but not paramount consideration the best interests of the appellant's children pursuant to s55 of the 2009 Act, which in an ideal world would be to remain in the UK with the continued presence and active role of the appellant as their father. However, no assessment of the children's best interests has been put before the Tribunal. Other than the obvious implications of further separation, there is no indication that the children's welfare and future development depend in any particular way on his continued presence in the UK. I also note that his wife was able to care for their children in the appellant's absence without any evidence of detrimental effect. In the premises, taking everything into account in the context of the whole, I am satisfied that the public interest in the appellant's removal from the UK as a convicted drug-dealer outweighs those best interests.

59. I have also considered any negative effect on completion of the rehabilitation process by the appellant's removal but, as stated above, I am not satisfied that he will be unable to complete rehabilitation in Albania, and there is no evidence to support such a suggestion. I also recognise that he has very recently established a limited company business and has purportedly commenced trading in an effort to provide for himself and his family. I have set out above my concerns about the limitations of this evidence. However, such skills as he has, together with his good health, can undoubtedly be put to good use in finding employment on return to Albania in order to support himself.

60. Considering all relevant factors in the round together with those matters urged on me in the oral submissions at the remaking hearing, I have found, for the reasons set out above, that serious grounds of public policy and/or public security are present, that his rehabilitation remains incomplete and that limited weight can be given to the evidence of rehabilitation, and that as a former foreign-national drug-dealer who has served a significant custodial sentence he continues to represent a genuine, present and sufficiently serious threat affecting one or more of the fundamental interests of UK society, even though the risk of re-offending is assessed as low.

61. In the premises, taking account of his personal circumstances and all other relevant considerations set out in Regulation 27 and Schedule 1, including the effect of his separation on his wife and children, the best interests of the children, and the positive character reference and steps he has taken towards

providing for his family, I find the decision to remove the appellant entirely proportionate. In other words, the public interest in his removal outweighs those factors in the appellant's favour. It follows that the appellant's appeal must fail.

Decision

I allow the respondent's appeal to the Upper Tribunal.

I set aside the decision of the First-tier Tribunal.

I remake the decision in the appeal by dismissing it.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup
Date: 23 November 2020

Anonymity Direction

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

"*Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings*."

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup
Date: 23 November 2020