



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-001614

First-tier Tribunal No: EA/10640/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 25 June 2023**

**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**Alex Cordeiro Das Neves Simioni**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr Slatter, Counsel instructed by Gunnercooke LLP  
For the Respondent: Ms Leconite, Senior Home Office Presenting Officer

**Heard at Field House on 14 April 2023**

**DECISION AND REASONS**

1. By a decision promulgated on 8 February 2023 the Upper Tribunal set aside the decision of the First-tier Tribunal with no findings preserved. I now remake that decision.

**Background**

2. The appellant is a citizen of Brazil. His wife (“the sponsor”) is an Italian citizen. The appellant and sponsor have a child born in October 2011 and an adopted child born in March 2003.
3. The appellant came to the UK in 2014 with the sponsor and their two children. In 2016 the appellant was convicted of driving without a licence and insurance and for two counts of possessing class A drugs with intent to supply. He was sentenced to 45 months’ imprisonment.
4. In 2017 the respondent made a deportation order against the appellant and the appellant left the UK, in accordance with that order, on 24 April 2017.

5. In November 2019 the sponsor, appellant and their youngest child sought to enter the UK. The appellant was refused. The sponsor and his younger daughter entered the UK and have since then remained in the UK. The sponsor was granted pre-settled status under the EU Settlement Scheme in December 2019.
6. On 11 February 2020 the appellant applied for revocation of the deportation order that had been made in 2017. On 19 April 2021 the respondent made a decision ("the SSHD decision") to revoke the deportation order and instead to exclude the appellant from the UK under Regulation 23(5) of the Immigration (EEA) Regulations 2016 ("the 2016 Regulations"). This step was taken in the light of the appellant being married to an EEA national and therefore falling for consideration under the 2016 Regulations.
7. In the SSHD decision, the respondent stated that pursuant to Regulation 23(5) of the 2016 Regulations she may exclude an EEA national or their family member from the UK where it is decided that the person's exclusions is justified on grounds of public policy, public security or public health but that any such exclusion must be in accordance with Regulation 27.
8. When evaluating the appellant's circumstances in accordance with Regulation 27, the respondent placed significant emphasis on the nature of the appellant's offending. It is stated that the trade in illicit drugs has a severe and negative impact on society.
9. It was also noted by the respondent that the appellant did not openly accept to the police what he had been doing. With respect to how the situation might have changed since the offending took place, it is stated in paragraph 29:

"In the absence of evidence that there has been any improvement in your personal circumstances since your conviction, or that you have successfully addressed the issues that prompted you to offend, it is considered reasonable to conclude that there remains a risk of you re-offending and continuing to pose a risk of harm to the public, or a section of the public."
10. It is also stated in the SSHD decision that the appellant's arrival in the UK as an adult aged approximately 30 indicates that he has maintained significant ties to Brazil and that he is not "sufficiently integrated" into the UK; and that there is no evidence of the appellant undertaking rehabilitative work whilst in custody. The respondent comments that having a wife and two children did not prevent the appellant from committing the offence and as such it is unlikely they would be in a position to prevent him reoffending.
11. After considering the position under the 2016 Regulations the respondent considered Article 8 ECHR. The respondent accepted that the appellant has a family life with the sponsor and his child living in the UK but did not accept that refusing him entry would be disproportionate.
12. The appellant is appealing against the SSHD decision to exclude him under regulation 23 of the 2016 Regulations, pursuant to Regulation 36 of the 2016 Regulations. He is also appealing against the decision to refuse his human rights (article 8 ECHR) claim, pursuant to section 82 of the Nationality Immigration and Asylum Act 2002.

## **Evidence**

13. There is no evidence before me from the sponsor. Mr Slatter stated that the sponsor was in Brazil and not returning until 28 April 2023. However, no application to adjourn was made in order for her to be able to give evidence. In any event, she has not produced a witness statement. Nor is there any evidence before me from the appellant's children.
14. The appellant has produced a short updated witness statement. I also have before me his short witness statement from the hearing before the First-tier Tribunal. The appellant does not have permission to give oral evidence from Brazil.
15. The evidence of the appellant, as set out in his statements, is that in 2018 his family moved to Italy but struggled to find work and therefore the sponsor and his youngest daughter decided to move to the UK, which they did in August 2019. The appellant states that the sponsor and his youngest daughter are established in the UK; that the sponsor is self-employed and his daughter attends school. He also states that the sponsor is renting a home. Exhibited to his up-to-date statement is a tenancy agreement and also some documents concerning the sponsor's self-employment. The appellant states that he does not have a criminal record in Brazil and has exhibited a document from Brazil confirming this. He also states that the incident in 2016 was "an isolated desperation act". The appellant's evidence (corroborated by medical records) is that in May 2022 he was diagnosed with a chronic myeloid leukaemia. The appellant's statement also refers to a report from a psychiatrist in Brazil (see discussion below).

## **Submissions**

16. Ms Leconite submitted that in the light of her inability to cross-examine the appellant only little weight should be given to the evidence he had submitted. She also noted the lack of other evidence (e.g. from the sponsor). Ms Leconite submitted that the respondent's decision includes clear reasons explaining why the appellant poses a threat and she did not accept that the appellant had submitted any evidence demonstrating that this risk has reduced.
17. Mr Slatter argued that there were multiple factors supporting the appellant's claim that he would not pose a significant risk. First, a psychiatric assessment states that the appellant is at low risk of reoffending. Second, the crime was "historic", in that approximately seven years had now elapsed since the offending. Third, the appellant has no criminal record in Brazil which supports his claim that the offending in 2016 was a one off. Fourth, the appellant's family are well-integrated into society in the UK. Fifth, as the appellant would have a right to work he would not be in the difficult financial position that he was in when he offended in 2016 and therefore the risk of him offending is low.

## **Analysis**

18. Mr Slatter argues that there is evidence of a change in the appellant's behaviour and circumstances that indicates he no longer represents a threat to society. I disagree, for the following reasons:
19. First, the appellant relies on a document produced by a Brazilian psychiatrist that Mr Slatter characterised as a psychiatric report. The document is extremely short (less than a page). It does not comply with the requirements for expert

evidence set out in the Practice Direction. There is nothing in the document to suggest that the psychiatrist writing it has been provided with any information about the appellant's offending in the UK (or even told that he was convicted of a crime). There is minimal analysis in the document, which does no more than state that the appellant was in "full mental health" at the time of the evaluation and did not disclose or show psychopathological symptoms. The only reference to criminal behaviour and risk is the final sentence which states "He is classified as an individual at low risk of criminal behaviour/violence". However, there is insufficient information provided in the document to understand the basis for this conclusion. For these reasons, I do not attach any weight to it.

20. Second, the appellant relies on the crime being "historic" and evidence from Brazil that he does not have a criminal record in that country. Seven years have elapsed since the crime was committed and there is no evidence of other criminality. Considered together with other factors, a period of seven years without offending might support the appellant's claim to no longer represent a threat. However, I do not consider that, without more, this is a significant factor.
21. Third, the appellant relies on his family being integrated in the UK and the prospect of better financial circumstances in the UK than when he offended. I accept that it could be the case that the circumstances of the appellant's family in the UK, and his prospect of obtaining employment, are such that these factors would reduce the likelihood of offending (e.g. because he would be well settled, integrated and financially secure). However, there is no evidence to support this assertion. The appellant has not provided evidence about his prospects of securing employment in the UK. Nor is there evidence from the sponsor about her circumstances in the UK. Her tenancy agreement and some documents showing that she works and their daughter attends school are appended to the appellant's statement but no details are provided about the relationship between the appellant and his family in the UK, or about the integration of the family in the UK. Nor is there any detail about the sponsor's employment and living arrangements. Whilst I recognise that the appellant cannot be faulted for not giving oral evidence given that permission to do so has not been given by the authorities in Brazil, this does not explain why he submitted a witness statement so lacking in detail. Nor has an adequate explanation been given for the absence of a witness statement from the sponsor.
22. The appellant committed a serious offence in 2016. He claims in his witness statement that it was an isolated incident but the remarks of the sentencing judge suggest otherwise, as the sentencing judge stated:
 

"This was not the first and only occasion on which you were dealing drugs".
23. Mr Slatter argues that the appellant has changed and that his circumstances have changed. That may be the case, but the evidence before me is insufficient to establish that this is the case. The appellant might have been able, through expert evidence, to establish that he no longer presents a risk of offending (or has a low risk) but, for the reasons explained above, the document from the Brazilian psychiatrist is not evidence to which I attach any weight. The appellant might, through (written and oral) evidence of his wife (or even through a detailed witness statement of his own) have establish that his circumstances have changed in a way that mitigates the risk of offending; but as explained above there was insufficient evidence before me to establish this.

24. Based on the evidence before me, I do not accept that the appellant has changed since he offended in 2016 or that there are material differences in his circumstances that would make him less likely to offend today than in 2016.
25. I am satisfied that the respondent has established, to the standard of the balance of probabilities, that the appellant's exclusion from the UK is justified on public security grounds. In reaching this conclusion, I have had regard to the principles set out in regulation 27(5) (including the principle of proportionality) and the considerations in regulation 27(6) and Schedule 1. The fundamental interests of society that would be undermined by allowing the appellant to enter the UK are the maintenance of public order, the prevention of social harm, and the protection of the public (paragraphs 7(b), (c) and (j) of Schedule 1). I reach this conclusion having regard only to the appellant's personal conduct and recognising that the conviction in and of itself does not justify the decision. It is not the fact that the appellant committed a serious crime that justifies his exclusion; it is the absence of evidence to show that there has been any change either in him or in his circumstances that reduces the risk of further similar offending. With respect to the factors in regulation 27(6), the difficulty for the appellant is that there is very little evidence before me about his integration into the UK before he was deported. Nor is there any evidence showing why his health, economic and family circumstances mean that he should not be excluded from the UK beyond the fact that his wife and youngest child have chosen to live in the UK without him rather than live together in Brazil or Italy. The appellant and sponsor have not provided evidence showing whether (and if so to what extent and in what way) the appellant's youngest child is negatively impacted by the separation; or why it would not be in her best interests for the family to live together in Brazil or Italy. The appellant and the sponsor could have provided detailed witness statements and evidence relevant to these issues but they have not done so.
26. Mr Slatter, in his skeleton argument, stated that an analysis of the appellant's case with reference to article 8 ECHR does not materially differ from a proportionality evaluation conducted under regulation 27(5), and he did not make any submissions in the skeleton argument about article 8. At the hearing he did not raise article 8 ECHR. As the appellant's article 8 claim was not pursued by Mr Slatter, I have not considered it.

### **Notice of Decision**

27. The appeal is dismissed.

**D. Sheridan**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**16.6.2023**