



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005663

First-tier Tribunal No: DA/00291/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 21 July 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

WILTON CUTUTE JOAO
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person – via Microsoft Teams (at Mr Joao’s request).
For the Respondent: Ms Young, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 16 June 2023

DECISION AND REASONS

1. Following a hearing at Bradford on 12 April 2023 the Upper Tribunal found an error of law in the decision of the First-tier Tribunal which allowed Wilton’s appeal against the refusal of his human rights claim and confirmation of the Secretary of State’s intention to deport him to Portugal.
2. It is not disputed Wilton was born on 29th July 1979 and that he arrived in the UK in 2008 when he was approximately 10 or 11 years of age.
3. It is not disputed that Wilton first came into contact with the criminal justice system of the UK on 3 July 2014, when he was cautioned for making false representations, and received two non-custodial sentences that year.
4. The events that led to the decision to deport culminated in Wilton’s conviction on the 23 May 2016 for wounding with intent to do grievous bodily harm for which he was sentenced to 90 months imprisonment. Wilton stabbed his victim, who is 17 years of age at the time, who required emergency bowel surgery and who it is said suffered profound psychological effects.
5. It also cannot be disputed that Wilton was convicted of two further offences, on 9 August 2016 of robbery and on 7 October 2016 of affray, for which he received a further 23 month prison sentence to run concurrently.

6. The sentencing remarks of the Crown Court Judge sitting at Snaresbrook on 23 May 2016 are set out at [17] of the error of law finding and are to be read as having been incorporated into this decision too.
7. In relation to the robbery and affray offences, for which no information was previously available, it is written in the OASys report at section R6.1:

Robbery - sentence 02/08/2016 to 9 months YOI

On 09/09/2015 two brothers passed a group of black males, the black males stood up and crowded towards them. A mixed race male said to [] "Have you got a cigarette?" to which [] stated he did not smoke. One of the male is said to them "What have you got for me? Give me your phones". The mixed race male then shouted "what you doing, you don't know who I am" and pulled a knife from his waistband. It was described by [] as at least three inches thick and it looked like a hunting knife or a machete. [] Had the pizzas he was carrying knocked from his hand by the mixed race looking male causing his shoebox to also fall to the floor. One of the black males has then grabbed [] and put him in a headlock, drawn what appeared to be a handgun and held it to [] head. [] Describes this man as saying "back off or I'll shoot him". The black man with the "handgun" then backed away, pointed the firearm towards the [] brothers and pulled the trigger. A clicking sound was made and the blackmail ran off towards CORONATION DRIVE. The other suspected males ran off in the opposite direction towards ELM PARK LT station.

8. In relation to the affray it is written:

Affray - sentence 07/10/2016 to 14 months YOI

On 01/03/2015, [] was sitting in his van with his girlfriend, waiting for his food order at DOMINOS. He saw the 3 white males walking away from DOMINOS. One of the males was carrying pizzas. He saw three black males sitting on a bench next to the roundabout facing the shops in TADWORTH PARADE. As the white males walked past the black males, the black males jumped off the bench and surrounded the white males. He heard shouting, but the content was inaudible. Fearing the safety of the white males, [] turned on his engine and drove towards the group. As he did this, the blackmail is dispersed. He saw two of the white males chasing after them. One white male remained at the bench in TADWORTH PARADE. [] Wound his window down and spoke to him to see if he was okay. The white male told him he had been robbed. [] Decided to drive up CORONATION DRIVE to see if he could assist in finding the black males. He saw one white man chasing a blackmail across the junction. The blackmail was holding a silver coloured handgun in his left hand.

9. In the reasons to deport decision it is written:

42. Your convictions indicate an established pattern of repeated acquisitive offending within a relatively short period of time. The fact that you have continued to offend without being deterred by previous convictions or sentences indicates that you have a lack of regard for the law, a lack of remorse for your offending behaviour, and a lack of understanding of the negative impact your offending behaviour has on others.
43. Furthermore, there is clearly an escalation in the seriousness of the offences you have committed, as indicated by the sentences you have received.
44. Your conviction history indicates an anti-social attitude towards the public and community. You have shown no remorse for your behaviour and you appear to have given no consideration to the time and public funds spent each time you offend - from the resources spent by the police investigating your crimes to your victims spending time in reporting the offences and in addition, the high costs involved in taking you to court.
45. You have demonstrated through your actions that you are capable of causing psychological and physical harm to others. You appear to have given no consideration to the consequences of your actions. The nature of your offence shows that you have the potential to act violently. There is no indication that

- you have shown any remorse for your offending, or that you have any recognition of the impact that your behaviour may have on others.
46. You have not stated whether or not you have attended any offence-related courses while in custody. In any event, the Home Office is of the view that attendance at such courses in a custodial environment does not in itself rehabilitate an offender or guarantee that the risk of re-offending will reduce after release. In your case, there is insufficient evidence that you have fully and permanently addressed all the reasons for your offending behaviour.
 47. Even though the courts have afforded you multiple opportunities to rehabilitate yourself, you have repeatedly continued to offend. You have failed to fully engage with the requirements of community-based sentences and have failed to address your offending behaviour. It is considered that your failure to comply with the courts demonstrates that you have not undertaken the necessary rehabilitation to reduce your re-offending. It is therefore considered that the potential exists for you to continue to offend and to present a risk of harm to the public as long you remain in the UK.
 48. 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. Preserved findings from the decision of the First-tier Tribunal include Wilton's immigration history, his offending history, and level of protection to which Wilton is entitled. In relation to that matter the First-tier Tribunal Judge wrote:
25. As is perhaps obvious from the forgoing, the only evidence of work relates to the appellant's mother rather than to the appellant himself. The appellant thus needs to demonstrate that she was exercising treaty rights for a continuous period of five years while he was in the UK as her "family member".
 26. The appellant's period of incarceration cannot count towards obtaining permanent residence (Jarusevicius (EEA Reg 21 - effect of imprisonment) [2012] UKUT 120). Thus he must show that his mother was exercising treaty rights for five years before May 2016, which is the date when he was sentenced for the stabbing.
 27. I note here that, according to the respondent's reasons for refusal letter, the appellant made an application for permanent residence on 4 March 2014, but that this application was refused on 28 April 2014 on the grounds that the appellant had not exercised treaty rights for five years.
 28. As presaged above, the evidence now before me as to the appellant and his mother's exercise of treaty rights is scant. I have no doubt that this is due in part to him not being legally represented. Nonetheless, the burden is upon the appellant to make out this part of his case on the balance of probabilities. On the evidence now before me, I am unable to conclude that the appellant acquired permanent residence at any point before his imprisonment in 2016. The only evidence of the appellant's mother's work before then comes in the form of a P60 for the year ending 2009, showing earnings of £86.80 for the entire tax year, and a P60 relating to 2015-16, showing earnings of £1805.50. These two documents are not enough to allow me to conclude that she was working continuously for a period of five years. Nor do I have sufficient evidence to show that she might have met the definition of "qualified person" in some other way during that period.
 29. It follows that I conclude that the appellant has not ever obtained permanent residence. He is only therefore entitled to the lowest level of protection under the Regulations. DA/00291/2020 7 The burden is upon the respondent to justify her decision to deport him, but she need not show "serious" or "imperative" grounds to do so.
11. Insufficient further evidence was adduced to warrant a different finding in relation to the level of protection from deportation Wilton is entitled to, which remains at the lowest level.

The new evidence

12. An issue that arose at the error of law stage was the fact the First-tier Tribunal Judge criticised the Secretary of State for not providing documents when she had no ability to furnish the same for the reasons set out in that decision.
13. A direction was given in the error of law finding for Wilton to provide all the documentary evidence he wished to rely on in support of his appeal and specifically directing him to obtain and send in particular a copy of the OASys/Pre-Sentencing Report prepared for the purposes of his proceedings before the Snaresbrook Crown Court and a report from his Probation Officer outlining, if possible, an indication of the causes of his offending, the work being done with him to address such causes, and any assessment in relation to the risk of reoffending and progress he has made to date. The Tribunal is grateful to Wilton for the efforts he has made which have resulted in the production of both an OASys report and the Pre-Sentencing Report (PSR), which are the documents that form the new evidence that was not before the First-tier Tribunal.
14. The PSR is dated 18 April 2016, it identifies the offences as one offence of wounding with intent to do grievous bodily harm and a second of resisting apprehension, for which the level of seriousness is stated to be the Custody Threshold. The report has been redacted by the Probation Service. In relation to the offence analysis it is written:

The details of this offence are that the victim Mr [V] and some friends were sitting talking outside a local chicken shop, when Mr Joao and the co-defendant, Mr [A] arrived with another male. Mr Joao who was known by the nickname of Swifty accused Mr [V] of taking his customers. Mr [V] denied that he sold drugs, however, Mr Joao became aggressive and slapped Mr [V], a scuffle then ensued. Mr [V] tried to get away by entering the shop, however, Mr Joao and his friends pursued the victim into the shop where the altercation continued. Mr Joao was heard to say to Mr [A] 'draw for the thing'(pass with a knife). Mr [A] then handed the knife to Mr Joao who stabbed Mr [V] once in the stomach.

In explanation for the offence, Mr Joao tells me that he did not intentionally stab the victim, he tells me that he had never encountered a problem with Mr [V] before and that he had made a mistake. Mr Joao tells me that he went to the shop to buy food and encountered Mr [V] there, he tells me that he had greeted Mr [V] in a friendly manner, however, he had responded aggressively. Mr Joao tells me that he could not understand why Mr [V] was speaking to him like that. Mr Joao tells me that Mr [V] then got off his bike to confront him and because he thought he was going to be attacked he slapped Mr [V] in the face.

Mr Joao tells me that this then led to an altercation, Mr Joao admits that he did ask for the knife, which he used to stab Mr [V]. Mr Joao tells me he cannot explain why he acted this way.

...

It was put to Mr Joao that this offence was to do with drug dealing and him accusing Mr [V] of encroaching on his territory. He tells me that this is not the case and that Mr [V] had been disrespectful to him, which angered him. Mr Joao tells me that there is another underlying reason for his actions, however, he tells me that he is not prepared to discuss this. This however, appears to be a case of instrumental violence, whereby Mr Joao has used violence to instil fear into Mr [V] and others.

15. It is also noted in the PSR that one of the two previous convictions was for battery against his partner and the other the burglary matter.

16. In the section of the report entitled 'Assessment of the Risk of Serious Harm' it is written:

A conviction for Grievous Bodily Harm Section 18 requires that I consider whether Mr Joao is at significant risk of causing serious harm by the commissioning of further offences, as defined by the CJA 2003 and LASPO 2012.

This was a reckless assault on Mr [V], which seems to have some element of planning and appears to be without provocation. Mr Joao used a knife and stabbed the victim once in the stomach, there is only one outcome with such an action and that is to intentionally cause serious harm to another. I can therefore only conclude that even if Mr Joao did not intend to seriously harm Mr [V], his recklessness is a concern that he is at high risk of serious harm to known persons, however, it is not my conclusion that he meets the criteria that attracts an extended or discretionary life sentence at this point, however, this matters for the court to determine.

Any risk of harm can however, be reduced by Mr Joao gaining appropriate decision and consequential thinking skills and also finding a more pro-social peer group.

17. The second document is the OASys report dated 11 May 2023.

18. The OASys report considers at section 2.14 whether Wilton's offending is part of an established pattern of similar offending. It is written "*It would appear that a violent pattern of offending had started to emerge involving carrying of weapons and dealing in drugs. All part of a serious group offending which places him and others at risk as he engages in criminal activities. In regards to the index offence, his lifestyle and association forms the context of the main risk concerns, as Mr Joao has the propensity to use violence, carry weapons and come involved in activity which places both himself and others at risk*".

19. In relation to his home area the report records that it is a condition of Wilton's licence that he must not enter his former home address at Barking and Dagenham without prior approval of his Offender Manager, and that despite being released to his brother's address in Sheffield he stated to his Probation Officer that he would like to reside with his mother and younger brother at the family home in Dagenham. A safeguarding referral was completed, in addition to police checks being carried out on the premises, and it concluded the mother's address was not assessed as suitable for release due to risk.

20. The desire to return to his home area gives rise to concerns in relation to future harm as the area where he previously lived and to where he wishes to return is directly related to his offending and harm given his being a member of a gang there/ or associated with adverse peer groups.

21. There is reference to Wilton coming to the attention of the mental health services and on 16 March 2021 of his being held on admission under Section 136 Mental Health Act in Sheffield. On 16 April 2021 his condition had improved following a prescription of Diazepam and Olanzapine, but that he was showing signs of paranoia. Wilton was moved to a respite unit used as a step down from a secure hospital by the NHS mental health services, and because he was initially detained under section 3 Wilton was entitled to section 117 after-care which means supported housing which will be funded for up to 2 years where agencies work with Wilton to develop independent living skills. Under this provision, on 27 October 2021, Wilton moved to his current address in Sheffield where he remains; although acknowledged during the course of his evidence that his stay there will come to an end in October 2023 after which he will have to find other accommodation.

22. Financial issues are said to be linked risk of serious harm or risk to individuals and other risks by reference to the fact Wilton has immigration restrictions and is not entitled to claim state benefits or gain employment, the victim identified

the catalyst for the stabbing offence was an argument over drug dealing giving rise to a possible financial link, and the obvious financial motivation for the Robbery offence being clear.

23. In relation to whether relationship issues contribute to risk of offending and harm, it is written:

Mr Joao states that he is currently single and it would appear that him and his ex-partner separated. There is a battery conviction against her in 2014 and he was made subject to an indefinite Restraining Order not to make contact with her. They have a six year old daughter who lives with her mother. Safeguarding concerns issues due to the DV, but since there is a RO in place, he is aware that he is not allowed contact with his ex and have to go through the legal channels to gain access to his daughter. Safeguarding checks will be carried out on his mother's home address due to the age of his younger brother 12 years of age. Safeguarding has been completed and Social Worker [] Assessment Team 1, Social Worker has assessed his parent's home address unsuitable for his release.

With regard to relationships, Mr Joao tells me that he was born in Portugal, however, his family came to the UK when he was aged 11 years. He tells me that they came for a better life, however, he admits that his mother was a victim of domestic violence and had moved the children away from his father. Mr Joao tells me that he is not seen his since leaving Portugal, they are estranged. Mr Joao tells me that his relationship with his mother is also difficult, because she suffers from a mental illness, he tells me that he is however, close to his siblings.

Mr Joao tells me that he has a long-term partner and they had a daughter.

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Wilton was in a relationship with []. He met her at a house party earlier this year. [] has mental health problems and had been in hospital herself.

There has been information relating to an alleged domestic incident.

Wilton's Social Worker, notified me that Wilton's partner [] who is part of the CERT (Community Enhanced Recovery Team) alleged he had assaulted her. [] disclosed to her caseworker that on Saturday (a day in August 21) she had a miscarriage due to her boyfriend punching her in the stomach 6/7 times. She had not called the police and does not want to but mentioned that it occurred in a public park in Mosborough. [] mentioned there was no hard evidence, no pregnancy test or bruising. She later denied making the allegation. Wilton also denied the event taking place.

They are no longer in a relationship. He tells me he is currently single.

24. The report refers to mental health issues, as noted above, but also to Wilton demonstrating poor problem solving and consequential thinking skills in not having considered the repercussions for himself or the victim prior to committing his offences. The report states Wilton will be considered to be a risk of harm to others if he retains the same mindset and that he would need to undertake an accredited Program such as RESOLVE and THINKING SKILLS Program to address issues to do with his offending. It is recorded that Wilton advised the Probation Officer that he had had no opportunity to complete any of those courses whilst in custody.
25. In the 'Risk of Serious Harm (Layer 3)' section of the OASys report it is noted that Wilton presents a risk to identifiable children. It is specifically stated that Wilton poses a risk of harm to his daughter due to the risk of domestic violence within the family home and her being exposed to that. His daughter lives with her mother and therefore he has no access to her due to there being an

indefinite Restraining Order not to contact the mother. By the virtue of his offending he would bring risk of violence and harm to any children that live in the same household as him due to the nature of his offences linked with serious group offending, pro-criminal peers, gang affiliations and weapon carriage. Wilton's younger brother resides at the family home address.

26. In the summary of risk of harm it is written:

Who is at risk.

Assessed as a high risk of harm to the public - most likely males of a similar age. This is due to the serious group offending.

Risk is triggered by gang activity and rivalry.

Assessed as medium risk to partners - due to his conviction of battery against his ex-partner and also taking into account an allegation by his most recent partner now estranged.

Assessed as medium risk to children - due to the DV risks. If he entered into a relationship this should be reviewed. He has a daughter who lives with her mother in London. If he has contact with his daughter unsupervised this should be reviewed based on the history with the mother.

Assessed that this review was medium to know adults - his victims. There has been no evidence of ongoing risk since he has been released. If he moved back to the London area this should be reviewed. (Victims are in London (to the best of my knowledge) - where the offence was committed).

Risk to self from retaliation where he confronts other males with weapons.

27. The nature of the risk is said to be serious physical harm through violence, stabbing, assault, intimidation and knife crime, using a weapon. Potentially committed in the context of gang culture. Emotional and physical harm to his partner and children in a domestic setting due to domestic abuse and owing to gang culture, himself is vulnerable to being stabbed/seriously assaulted.

28. In relation to the assessment of when the risk is likely to be the greatest, section R 10.3, it is written:

Based on the index offences Wilton is assessed as posing a high risk of serious harm to the public. His lifestyle and association increases his risk in a conflict situation as Mr Joao would like to be respected amongst his peer which involves the use of knife, aggression, threats and violence to increase intimidation. He stabbed the victim with a knife over a drug deal feud. The impact of future offending could be serious, if he does not change his mindset and the association he keeps. He has breached several community sentences by committing further offences when placed on community orders. His risk of harm is likely to occur at any time in the community, if he is dealing in drugs, in dispute with rival gangs, and his carrying a knife. Although there has been no evidence of this since release, Wilton continues to smoke cannabis, there have been allegations that he was dealing drugs from the Wainwright Centre (unproven), evidence that he is stayed away from his residence unauthorised, and information of his attending parties. Wilton has not been proactive in developing pro-social use of daily life. There are parallels between his lifestyle at the time of his offences and now therefore risk remains high at this review.

He is assessed as posing a Medium risk of harm to partners and children due to domestic violence based on his Battery conviction in 2014 and made subject to an indefinite Restraining Order, and also taking into account an allegation by his most recent partner now estranged.

Assessed at this review as medium to known adults – his victims. There has been no evidence of ongoing risk since he has been released. If he moved back to the London area this should be reviewed. (Victims are in London (to the best of my knowledge) - where the offence was committed).

29. The author of the report identifies factors likely to reduce the risk as being completion of the THINKING Skills Programme, gaining more appropriate thinking skills, finding a more Pro-social peer group, avoidance of gangs, stop dealing in drugs, develop positive relationship, release to a different area, comply with incomplete Sentence Plan, comply with licence conditions.
30. The evidence shows that the assessment within the community is therefore that Wilton poses a medium risk to children, high risk to members of the public, a medium risk to known adults, and a low risk to staff.
31. The report also notes that Wilton is currently in the community but that his sentence is not due to end until 23rd February 2025. Wilton therefore remains subject to licence conditions.
32. One of those conditions requires provision of samples of oral fluid/urine order to test whether he has any specified Class A or specified Class B drugs in his body, the purpose of which is to ensure that he is compliant with the condition of the licence requiring him to be of good behaviour, which appears to have been breached by reference to the fact he has continued to take cannabis and the other concerns recorded above in relation to his behaviour.
33. In relation to the motivation to address his offending behaviour Wilton is assessed as being “quite motivated” and that his motivation had not change during the period of assessment. His capacity to change and reduce offending had not changed either. It is stated that work carried out so far includes drug intervention, testing and treatment, offence analysis, thinking skills, consequential thinking, raising victim awareness, support around mental health including liaison with Social Worker and the Community Mental Health team, support around immigration status, future planning advocacy around interest in work interests, and a motivational interview to encourage him to develop structure and routine to his day. The report indicates further work is needed to increase his motivation in particular as there are concerns about his lack of routine, sleeping through the day and then being up at night, at which time he listens to and writes music. It is stated that factors that may inhibit change are reoffending, negative association and lifestyle, increased substance misuse, loss of access to mental health support and the package that comes with that, and a negative decision from an immigration tribunal.
34. Positive aspects are identified as the fact Wilton remains in the community, has engaged with the mental health team, and made improvements to his mental health.

Discussion and analysis

35. There is within the bundle of documents provided on Wilton’s behalf copy correspondence including to the appellant’s brother who lives in Sheffield confirming Wilton having being admitted on 16 March 2021 under section 2 of the Mental Health Act 1983 to enable doctors to assess his condition and a further letter of 4 May 2021 confirming Wilton was being held for an initial period of up to 6 months on 12 April 2021 under section 3 of the Mental Health Act 1983.
36. I have also seen a letter dated 2 November 2021 written by Mr Chris Parkhouse, an Adult Mental Health Social Worker, addressed to Wilton’s previous solicitors.
37. In addition to setting out the history of intervention with the mental health services and Wilton it was noted that during the period of assessment under

Section 3 Wilton presented as thought disordered and confused, lying on his bed with minimal interaction with the assessing team, and demonstrated little insight into his mental health problems. It is, however, noted that with medication his mental health gradually improved and on 8 May 2021 he was referred to Wainwright Crescent, a Mental Health Respite Unit as he did not require hospital treatment but needed support with daily living and to assess his need for ongoing accommodation.

38. On 27 October 2021 Wilton was referred to the Beaufort Road Supported Accommodation Project where he lives in a self-contained flat although staff are on site, that he is compliant with medication, and engages well with the staff.
39. The report states that Wilton still experiences symptoms of schizophrenia, presents as passive and withdrawn at times, requires support with a number of daily activities, is able to engage in a conversation and demonstrates insight into his mental health problems and his current situation.
40. Wilton has also been under the care of a psychiatrist, Dr Gazala Shaikh.
41. It is Mr Parkhouse's opinion that Wilton's mental health remains stable and is unlikely to alter significantly in the future. He is said to be keen to move on with his life and talked about looking for voluntary and paid work and meets regularly with his brother with whom he attends a dance class and the gym and is planning to join a football club. It is said Wilton is well supported by his family who live in England and has engaged well with his care plan.
42. The letter concludes:

I would be concerned that should Wilton not be allowed to remain in England that there will be a significant deterioration in his mental health as they would no longer have access to the support which keeps them well and is helping him to move on with his life.

I feel that Wilton has capacity to appear before the hearing and there is no reason why the hearing should be delayed any longer.

43. Wilton attended both the Error of Law hearing and Resumed hearing remotely via Microsoft Teams as this was his chosen method of attendance. Wilton was cross-examined in an appropriate manner by Ms Young and answered all the questions that were asked of him.
44. During his evidence Wilton confirmed he has indirect contact fortnightly with his daughter when she was with his mother and that he was able to speak to his mother daily and claimed that the child's mother was aware that he had contact with her.
45. Wilton was asked whether he had undertaken any of the work recommended in the reports and claimed that he had started one of the courses about three weeks ago about how to manage his emotions, to which he been referred to by the Probation Officer. There are ten sessions, and he attends once a week.
46. It transpired this was not a course Wilton had voluntarily sought out himself but one that had been suggested to him by the Probation Officer.
47. Having assessed all the material that has been made available I find on the balance of probabilities that Wilton does pose a genuine and sufficiently serious threat to fundamental interests of society, namely the avoidance of crime with particular reference to violence, gang, and drug-related offending.
48. I find the OASys report identifies a high risk. The report is dated May 2023 and therefore whilst there is reference to historical issues clearly represents the view of the report's author at the current time.
49. Although Wilton claimed to have started a course organised by Probation there was no other information regarding the same.
50. The evidence now available identifies specific characteristics of Wilton and its associations that create the risk of further harm and offending. I accept he is

currently on licence which will act as a deterrent as if he reoffends he will have to serve the balance of the current sentence, together with any additional period of imprisonment, in custody. I also accept Wilton is currently in a secure environment arranged through the Mental Health Services but that is to end in October of this year and there is insufficient evidence to show that without such support there is not a real risk that Wilton will resort to the type of behaviour identified in the past by associating with those similar to those he associated with in the past. I have noted Wilton's desire to return to his home with his mother and siblings which is identified as unsuitable accommodation, and which is in the location that specifically increases the risk referred to in the reports.

51. There is insufficient evidence to support a finding that Wilton has done enough to demonstrate the May 2023 OASys report's assessment as to risk not a current, credible, assessment of an ongoing real risk of his reoffending and causing serious harm.
52. But that in itself is not sufficient to warrant the appeal being dismissed. Regulation 27 of the Immigration (European Economic Area) Regulations 2016 reads:

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 a right of permanent residence under regulation 15 and who] 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.

(7) In the case of a relevant decision taken on grounds of public health—

- (a) a disease that does not have epidemic potential as defined by the relevant instruments of the World Health Organisation or is not a disease listed in Schedule 1 to the Health Protection (Notification) Regulations 2010(18); or
- (b) if the person concerned is in the United Kingdom, any disease occurring after the three month period beginning on the date on which the person arrived in the United Kingdom,

does not constitute grounds for the decision.

(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.).

53. The Immigration (EEA) Regulations 2016 (‘the 2016 Regulations’) , schedule 1 paragraph 3, states that where an EEA national has received a custodial sentence or as a persistent offender, the longer the sentence, or the more numerous convictions, the greater the likelihood that the individual’s continued presence in the UK represents a genuine, present and sufficiently serious threat affecting the fundamental interests of society. In this appeal in addition to the lengthy sentence Wilton received for his offending there is ample additional evidence to warrant finding his presence in the UK does represent a genuine, present and sufficiently serious threat.
54. The concerns recorded in the OASys report, the failure to deal with identified issues giving rise to a greater risk, the continued use of cannabis, lack of undertaking appropriate courses to sufficiently mitigate the risk, particular concerns about the triggers for offending previously which do not appear to have been addressed, establish on the balance of probabilities a propensity for Wilton to act in the same way in the future.
55. Although the propensity to reoffend is crucial to the decision to remove it must be proportionate and must be an appropriate and necessary step for the attainment of the public objective sought.
56. There is no evidence that the decision to deport is taken on a basis other than Wilson’s personal conduct. As found above, Wilson’s personal conduct represents a genuine persistent in sufficiently serious threat. It is noted that threat does not need to be imminent, but I find it is real.
57. I do not find that the decision has been made solely on the basis of Wilson’s criminal convictions although, as noted below, the nature of the offending is relevant.
58. In *Bulale v Secretary State the Home Department* [2008] EWCA Civ 806 the Court of Appeal said that a Dutch citizen who had been here for five years, and who had a right of residence, could only be expelled if there was serious grounds of public policy under regulation 21 (2) threatening one of the fundamental interests of society under regulation 21 (5) (c) and his expulsion was proportionate in light of the factors in regulation 21 (6) of the 2006 Regulations. There was a high risk of the appellant committing robberies of

some seriousness. The Court of Appeal said that protecting members of society from violent crime is clearly a fundamental interests of society which the appellant and his propensity to commit robbery threatened. It was found the Tribunal was entitled to conclude that he represented a genuine sufficiently serious risk to the public whilst the thrust of the Directive was that it should be difficult to expel EU citizens the crimes of dishonesty, violence was a different matter. The level of violence was not laid down and Member States were given a certain amount of judgement in deciding what their nationals have to put up with.

59. The 2016 Regulations permit a decision to remove being taken on preventative grounds which is relevant in relation to the high risk of offending identified in reports.
60. As noted above in this appeal, Wilton does not have the benefit of the middle or higher levels of protection but only the lowest level of protection from deportation.
61. Schedule 1 of the 2016 Regulations, entitled 'Considerations of public policy, public security and the fundamental interests of society etc', reads:

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.

62. Wilton entered the UK aged 10 or 11. He was born on the 29 July 1997 and is therefore now 26 years of age. He was sentenced to a substantial period of imprisonment on 23 May 2016 when he was aged 19. It is stated Wilton attended school in the UK and lived with his family, composed of his mother and siblings, but with little else to evidence the extent of his integration into the UK.

63. Paragraph [2] of Schedule 1 specifically states that such connections with persons of the same nationality or language do not amount to integration in the United Kingdom.

64. Taking his claim at its highest, Wilton must have had some degree of integration but what he has appears to have been lost as a result of his offending and imprisonment and there was little evidence of current integration, his current situation being that he is in the above stated unit with restrictions upon his ability to work and to form employment or other ties within society.

65. Wilton's main basis for claiming integration is based upon his familial and societal links with members of his family which is insufficient in accordance with

Schedule 1. I find there is insufficient evidence of a sufficient degree of wider cultural and societal integration.

66. The relevant fundamental interests of society, detailed at [7] of Schedule 1 of the 2016 Regulations, are, inter alia, maintaining public order, preventing social harm, 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, combating effects of persistent offending, protecting the public, and acting in the best interests of the child in light of the safeguarding issues identified in the OASys report and assessed risk that Wilton poses to children.
67. Wilton entered the UK aged 10 or 11. He attained adult hood at the age of 18 indicating that the majority of his childhood was spent in Portugal. The European Court of Human Rights accepted in *Maslov v Austria* (Application no. 1638/03) that no absolute right could be derived from Article 8 ECHR not to be expelled, before finding at [75]:

“In short, the court considers that for a settled migrant who has lawfully spent all of the major part of his or her childhood and youth in the host country, very serious reasons are required to justify expulsion. This is all the more so where the person concerned committed the offences as a juvenile.”

68. The offence involving the knife was committed in 2015. The offence of robbery was committed on 9 September 2015 and the offence of affray on 1 March 2015 where Wilton was 18 years of age for the first offence and 17 years 8 months old for the offence of affray. For all these offences Wilton was either a juvenile or young adult.
69. When considering other issues relevant to the proportionality assessment I find as follows:

- the nature and seriousness of the offence committed by the applicant; Wilton committed a very serious offence of violence including the use of a knife, an offence of robbery and affray, all offences of a violent nature. Wilton has been assessed as posing a high risk of further harm and the consequence of further offending is likely to result in serious harm to his victims. There is also reference to domestic violence issues, suspected use of cannabis, and not adhering to restrictions placed upon him which is mirrored in his previous breaches of community sentences and bail conditions.
- the length of the applicant’s stay in the country from which he or she is to be expelled; Wilton has been in the UK since 2008.
- the time elapsed since the offence was committed and the applicant’s conduct during that period; Wilton was convicted and sentenced in 2019. He has remained in custody until released on licence and following serious concerns relating to his mental health has either been in hospital or in structured accommodation, as detailed above. There is no evidence that he has committed further offences of a violent nature although there is a reference to a domestic violence incident involving a previous partner. There is also reference to use of cannabis which is a Class B prohibited substance.
- the nationalities of the various persons concerned; - the applicant’s family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple’s family life; Wilton is a Portuguese national. He is single and not married. There is no issue in relation to the effectiveness of the couple’s family life to consider. It is not made out Wilton has a family life recognised by Article 8 ECHR in the UK although he has established a private life. Evidence of that is limited but will include his friends, associates, family members he is in contact with, and his music.

- whether the spouse knew about the offence at the time when he or she entered into a family relationship; not applicable as Wilton does not have a spouse.

- whether there are children of the marriage, and if so, their age; This is not applicable as there are no children living with Wilton. He has a daughter from a previous relationship. He has no direct contact with the child or the child's mother as he is subject to an indefinite Restraining Order as a result of his conduct. Wilton has been assessed as posing a real risk to children especially if they are present when he is violent to their mother.

- the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled; Wilton has provided very little evidence in relation to the family situation in Portugal. He started school in the UK in 2009 and lived with his mother and two siblings. In his witness statement he stated that he has most of his family living in the UK, his mum, two brothers an uncle and cousins. The use of the phrase "most of my family" indicates there are other family members remaining in Portugal. In the OASys report is reference to the support Wilton receives from his UK-based family and it is not made out such support would not continue if he was deported, or that there will be no family members willing and able to assist Wilton in re-establishing himself in Portugal. It is not made out he does not speak Portuguese. I accept Wilton has had mental health issues, but these are controlled by medication and appropriate support. As Wilton has been diagnosed the issue is the availability and accessibility of ongoing medication. It has not been made out before me that Wilton would not be able to access or receive appropriate help to deal with any mental health issues that he faces. Although I accept it will be difficult for Wilton to have to rebuild his life in Portugal and that he may face problems in doing so, I do not find that the seriousness of any difficulties he will experience in Portugal will be such as to make the decision disproportionate.

- the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; The best interests of Wilton's daughter are to remain with her mother. It is not suggested that she will be expected to go and live in Portugal. The child may be able to visit Wilton if funds allow and it is not made out that the current contract, which is by way of indirect contact only, cannot continue once Wilton is in Portugal.

- the solidity of social, cultural and family ties with the host country and with the country of destination; I have commented above upon the degree of integration Wilton has to the UK. He has family ties as well as cultural ties with his mother and brothers in the UK and an uncle. He did not give any evidence in relation to the ties with other family members in Portugal and there is no evidence that whatever family are still there will not be able to render assistance to him. It is a fact that Wilton's ties to the UK on a personal level are greater than his ties to Portugal, but I do not find this is an issue that, in isolation, is sufficient to make the decision disproportionate.

- I do not find it made out Wilton will be unable to secure employment in Portugal or will not be able to continue to pursue the writing and performing of his music there. I have been able to listen to the YouTube track referred to in the OASys report which appears to be in a style some may interpret as being gangster rap.

70. Part of the proportionality exercise in relation to an EU case requires consideration of prospects of rehabilitation. The evidence provided so far indicates that efforts made to try and address the underlying causes of Wilton's offending are very limited with comment being made in the OASys report about

his willingness and ability to engage with the processes and change. It is likely to be the same whether Wilton is in the UK or Portugal. The lack of evidence of a successful program of rehabilitation strengthens the argument that deportation is needed to prevent further harm to the public. This is a case in which the evidence of rehabilitation is limited and includes that no further offences have been committed supported by the bald assertion by Wilton that he is rehabilitated and will not commit further offences, which is undermined by the bulk of the evidence. It is not made out that the type of courses that it was recommended Wilton needs to attend are not available in Portugal or that he would not be granted access to them via the appropriate Offender Management service there. It is not made out Wilton will not be able to access help for his mental health needs in Portugal. In *Secretary of State for the Home Department v Arturas Dumliauskas, Lukasz Wozniak and ME (Netherlands)* [2015] EWCA Civ 145 it was held that in the absence of evidence, it was not to be assumed that medical service and other forms of support were materially different in other member states from those available in the UK.

71. Weighing all the relevant aspects together, I conclude that in this appeal in which Wilton has been convicted of a number of offences of violence, that there is clear evidence in the OASys that he presents a high risk of causing further harm, that there is insufficient evidence to show that Wilton has dealt with the issues that led to his offending in the past, that there is strong evidence of Wilton committing further offences, that at the end of his period of stay in his current accommodation in October 2023 will have to return to live in the community in relation to which he has expressed a wish to be able to return to live in his home area, preferably with his mother even though that is not suitable accommodation, Wilton's current conduct has included suspicion of ongoing drug taking (cannabis), domestic violence, and lack of adherence to rules and regulations, it is not made out rehabilitation has occurred or there are realistic prospects of it being pursued in the UK, that the relevant factors set out above support a finding that any interference Wilton's private life as a result of the decision to deport him is proportionate under both EU law in relation to Free Movement rights and Article 8 ECHR.
72. The level of protection to which Wilton is entitled is the very lowest level and I have found he does present a risk to more than one of the fundamental interests of society. Very serious reasons justifying expulsion have been made out by the Secretary of state.
73. Having considered all matters together I conclude it is proportionate for Wilton to be deported and dismiss his appeal accordingly.

Notice of Decision

74. I dismiss the appeal.

C J Hanson
Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 July 2023