



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

Case No: UI-2022-005820

First-tier Tribunal No: DA/00143/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

13<sup>th</sup> November 2023

**Before**

**UPPER TRIBUNAL JUDGE KEITH**  
**DEPUTY UPPER TRIBUNAL JUDGE METZER KC**

**Between**

**The Secretary of State for the Home Department**

Appellant

**and**

**Mohamed Ali Maged**  
**(NO ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer

For the Respondent: Ms J Heybroek, Counsel, instructed by David Benson Solicitors

**Heard at Field House on 20<sup>th</sup> October 2023**

**DECISION AND REASONS**

**Background**

1. These written reasons reflect the oral reasons we gave to the parties at the end of the hearing. As this is the Secretary of State's appeal, for the avoidance of any confusion we will refer to the parties as the claimant and the Secretary of State for the remainder of these reasons.
2. The Secretary of State's appeal is against the decision of First-tier Tribunal Judge Burnett ("the Judge") who, in his decision of 14<sup>th</sup> September 2022, allowed the claimant's appeal against a decision to make a deportation order under Regulations 23 and 27 of the Immigration (EEA) Regulations 2016 (the

“Regulations”). That decision was made on 14<sup>th</sup> December 2020 with a supplementary decision on 17<sup>th</sup> November 2021.

### **Issues before the Judge**

3. The core issues before the Judge were:
  - a. The level of protection to which the claimant was entitled, under the Regulations – either what is termed “serious grounds” protection (see Regulation 27(3)), or (more beneficial to the claimant), “imperative grounds” (see Regulation 27(4)). The level of protection in turn depended on whether the claimant’s integrative links were broken as a result of his convictions and in particular, his most recent sentence on 25<sup>th</sup> August 2020 to five years and eight months’ imprisonment (he was still in prison at the time of his appeal before the Judge) for robbery, attempted robbery, dishonestly making false representations and assault by beating an emergency worker.
  - b. Whether the claimant’s personal conduct represented a genuine, present and sufficiently serious threat (see Regulation 27(5)(c)).
  - c. When considering the proportionality of deportation, whether there were reasonable prospects of the claimant ceasing to commit crime and other factors under Schedule 1 of the Regulations.
4. The context of the claimant’s history was that as a Dutch national, he had entered the UK in 2006 aged seven, and had come to the attention of the juvenile courts in 2015, when he was convicted of possessing an offensive weapon in a public place. He was sentenced to a referral order and ordered to pay a victim surcharge. He was convicted on 15<sup>th</sup> November 2016 of possession of cannabis and fined £50. On 13<sup>th</sup> December 2019, he was once again convicted possession of cannabis and fined. His offending then escalated and on 27<sup>th</sup> November 2019, he was convicted of dishonestly making false representations to make gain for himself or another and of assaults by beating of an emergency worker. On 14<sup>th</sup> February 2020, he was convicted of the index offences, which the Judge outlined in the decision.

### **The Judge’s reasons for allowing the claimant’s appeal**

5. We do no more than summarise the gist of the Judge’s reasons. He was conscious of the Secretary of State’s submissions that the claimant was involved in criminal gangs, and there was an established pattern of knife crime with associates. While the risk posed by the claimant was “low,” the risk was at the upper end of this category (§9 of the Judge’s reasons). The Secretary of State also argued that the claimant’s prior integrative links were broken, as he no longer had established ties and community engagement, beyond pro-criminal peers. The Secretary of State disputed the level of protection to which the claimant was entitled. She also argued that the threat posed by the claimant was sufficient to engage Regulation 27(5) of the Regulations. There were with aggravating features. The claimant had engaged in pre-planned violent crimes on lone victims, for monetary gain. The seriousness of the offences was reflected in the sentencing judge’s remarks. There was no evidence that the claimant’s rehabilitation would be prevented if he were removed to his country of origin, the Netherlands.

6. The Judge considered the claimant's submissions. The claimant acknowledged the seriousness of the index offence but also referred to having lived in the UK for ten years before his sentencing. He had attended most of his school education in the UK, and it was not in dispute that he had always lived with his parents and sibling, to whom he was close. He had worked before his offending, but that had been cut short during the Covid lockdowns. Alternatively, even if integrative links were broken, then even on "serious grounds," the index offences did not justify deportation. The claimant had been influenced by pro-criminal peers, and had offended while using cannabis, which he was seeking to address. His Probation Service assessors had assessed him as being at low risk of re-offending.
7. The Judge reminded himself of the law (in particular Regulations 23, 27 and Schedule 1), at §20. He then explained his conclusions at §21 onwards. He set out the nature of the index offence and the claimant's offending history. He noted the claimant's immigration history, specifically that the claimant had been present in the UK before the index offence for at least ten years. The Judge recited the Secretary of State's consideration of the factors as per Tsakouridis (C-145/09), namely whether the claimant had been absent from the UK; the time he had spent in prison; his overall length of residence in the UK; his family connections in the UK; his links to the Netherlands and his age on arrival. The Judge set out the Secretary of State's position as to why integrative links had been broken, which we do not recite here. The Judge considered the index offence in detail at §30. From §33, he went on to make findings about the claimant's background circumstances, including his attendance at primary and secondary school in the UK; his attainment of GCSEs; his employment in a factory and for a furniture company; and his family relationship with his parents and siblings. The Judge found that the claimant's links to the Netherlands would be limited, as would his ability to speak the Dutch language. The Judge considered the claimant's participation in rehabilitation courses, and his expression of deep remorse. At §40, the Judge found that the claimant's integrative links had not been broken by the index offence or subsequent imprisonment, in the context of his substantial links before his imprisonment and his continuing family links. The Judge concluded that the claimant was entitled to the highest level of protection ("imperative grounds"), but also, at §42, considered the alternative level of protection, namely "serious grounds".
8. The Judge assessed the threat posed by the claimant's personal conduct. He reminded himself of the sentencing judge's remarks and the particularly aggravating nature of the index offences, reflected in the length of the prison sentence. At §48, the Judge considered an OASys Report, the author of which had assessed the risk posed by the claimant's conduct, included factors likely to lead to reoffending, such as not having employment and being short of money, as well as the effect of drug use. The OASys Report author had nevertheless assessed the claimant as presenting a low risk of reoffending, with a low risk of serious recidivism. The author recognised that there was a medium risk of harm to the public if he did reoffend.
9. At §50, the Judge concluded that while the claimant's crimes were linked to his drugs use, he was capable of change, the evidence for which included his enhanced prisoner status and good behaviour and engagement in prison courses. The Judge concluded that there was no reason to go behind the OASys author's professional assessment, despite the seriousness of the index offences. He concluded that the Secretary of State had not shown that the claimant

represented a genuine, present and sufficiently serious threat, either on imperative or serious grounds (§54).

10. The Judge noted that this would be sufficient to dispose of the appeal, but for completeness, went on to consider the question of proportionality. Within that context, he considered again the claimant's residence in the UK; his integrative links and the time spent in prison; and his family and other personal circumstances. The Judge concluded that deportation would be disproportionate, in the context of the Regulations.

### **The Secretary of State's appeal and submissions before us**

11. The Secretary of State appealed the decision and whilst her appeal was initially refused, Upper Tribunal Judge Rimington granted permission on a renewed application.
12. We need do no more than summarise the gist of the grounds. In ground (1), the Secretary of State argued that the Judge had erred in the adequacy of his reasons for finding that the claimant's conduct posed a low risk of reoffending. Low risk was not the same thing as no risk and had failed to consider the consequences of reoffending in line with the authority of Kamki [2017] EWCA Civ 1715. The claimant's offending had been finically motivated in the context of drug use. There was no finding that he had any prospect of gaining work, nor adequate findings that he would desist from drug use or had an appreciation of the impact of his offending. The Judge had failed to explain why the claimant had broken from his criminal lifestyle and why integrative links had not been broken. Consequently, the Judge had erred in his conclusions on the level of protection to which the claimant was entitled.
13. In ground (2), the Secretary of State contended that the Judge had misdirected himself and had failed to consider paragraph 7 of Schedule 1 of the Regulations, namely a list of fundamental interests of society. The Judge had failed to consider why, in the context of the claimant's age, state of health, family or other factors, deportation would be disproportionate.
14. In his oral submissions, on ground (1), Mr Melvin argued that the Judge's analysis at §§48 and 49 in relation to the risk posed by the claimant's conduct was deficient. He had cited the OASys assessment without going on to explain why that meant that the claimant did not represent a relevant risk. The claimant was yet to demonstrate that he avoided criminal gangs or drugs use. He was still in prison. The Judge had needed to do more than just rely in the OASys report. While the claimant had worked before he was sentenced to imprisonment, there was no evidence that he would not take up with a criminal gang upon release. In relation to ground (2), the crucial factor was the nature of the crimes and the weight to be attached to them in the context of Schedule 1 of the Regulations.

### **The claimant's submissions**

15. Ms Heybroek reminded us that, as per Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085 (IAC), that a judge's reasons need not be extensive. A brief explanation may suffice if the judgment overall makes sense. This Tribunal would not normally set aside a judge's decision where there has been no misdirection of law and the fact-finding process cannot be criticised, unless the conclusions that the judge draws from the primary data were not open to him or her.

16. The weight placed on evidential issues, in making findings, and in turn, the weight placed on facts in a proportionality exercise were normally a matter for a judge.
17. In relation to ground (1), namely the seriousness of the claimant's offending; its escalation and the risk posed as a result were all factors which the Judge had considered at §§45 to 48, in reaching his conclusion at §§50 to 54. In relation to ground (2), i.e. proportionality, the Judge had referred expressly to the factors in Schedule 1 (§20) and there was no need for him to make specific findings in relation to each Schedule 1 factor. At §§26 to 40, the Judge had explained clearly why the claimant's personal conduct did not pose the risk as contended for by the respondent and why he had not lost integrative links.

### **Discussion and Conclusions**

18. We pause to commend the structure and clarity of the judgment under challenge. We do so as on occasion, this Tribunal considers challenges based on adequacy of reasons, when, as Shizad makes clear, there is no need for (and we do not encourage) a lengthy recitation of the evidence and repetition of factors in explaining the conclusions reached, provided that the overall judgment makes sense. While permission to appeal in this case was granted, it is clear to us from the methodical way in which the Judge set out the law; explained his findings; and then reached his conclusions by an application of the law to the facts, that as a whole, the Judge's reasons were sufficient and he had not failed to take into account material factors or misdirected himself in reaching his conclusions.
19. Turning to ground (1), and the question of the risk posed by the claimant's conduct and whether he had retained integrative links to the UK, the Judge set out clearly the law; analysed and made findings on the nature of the claimant's family life before he was imprisoned and which he had maintained; and his actions whilst in prison. The Judge explained, in our view entirely adequately, why the claimant remained socially and culturally integrated into the UK, such that the Judge was entitled to conclude that the claimant could only be deported based on "imperative grounds." In any event, the Judge had considered the same set of facts in the context of "serious grounds" protection.
20. In relation to the risk posed by the claimant's personal conduct, this was a case where the Judge was at pains to acknowledge the very serious nature of the index offences and what had motivated those offences, which included financial motivation and pro-criminal peer association. The Judge considered that, as did the author of the OASys report, that the claimant posed a low risk of reoffending and of serious recidivism, while acknowledging the medium risk of serious harm, if he did reoffend. It was clear why the Judge reached the conclusion he did. It was based on his integrative links with non-criminal peers, namely his family; his remorse; his behaviour while in prison; the fact of previous employment (relevant to the potential for future employment), and the practical specialist experience of the OASys assessor. The Judge's reasons were more than sufficient.
21. Turning finally to ground (2), (proportionality), there was no misdirection, where the Judge had referred expressly to all of the factors in Schedule 1. We accept Ms Heybroek's submission that it was unnecessary in this case, (and we do not endorse the need for a checklist") for the Judge to have recited the facts in relation to each factor; to pick but one example, the fact that the claimant was 22 years old. The Judge had plainly considered the ability of the claimant to integrate into the Netherlands and, crucially in respect of the Secretary of State's

concerns, had addressed the particularly aggravating aspects of the claimant's index offences. This was at the heart of the public interest in the claimant's deportation, which he balanced against the low risk of reoffending which the claimant's personal conduct posed.

22. We conclude that the Judge did not err in law in reaching his decision, which therefore stands.

**Notice of Decision**

**The Judge's decision did not involve the making of an error on a point of law.**

**The Judge's decision stands.**

**J Keith**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**7<sup>th</sup> November 2023**