



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

**Case No: UI-2022-006087**  
**First-tier Tribunal No:**  
**EA/50253/2022**  
**IA/01349/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 03 July 2023**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**JA**  
**(ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr Lawson, a Senior Home Office Presenting Officer.  
For the Respondent: Ms Patyna instructed by trp Solicitors (via Microsoft Teams).

**Heard at Birmingham Civil Justice Centre on 20 June 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the above respondent is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the respondent, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Barker (the Judge), promulgated on 22 November 2022, in which the Judge allowed the above respondent's appeal against the Secretary of State's refusal to revoke a deportation order made against him pursuant to the Immigration (European Economic Area) Regulations ('the Regulations') in 2015.

2. The Judge makes reference to the history, noting the above respondent is a national of Sweden born on 2 April 1995 who entered the United Kingdom in 2005 when he was 10 years of age.
3. An earlier deportation order made as a result of the above respondent's criminal behaviour was successfully appealed in 2013 although he committed further offences and was made the subject of another deportation order pursuant to the Regulations. The above respondent's appeal against that decision was dismissed on 14 January 2016 and he was deported from the UK on 12 March 2016. The above respondent attempted to enter the UK in breach of the deportation order on 28 November 2017 but was removed on 17 December 2017.
4. On 30 December 2020 the above respondent made a valid application to revoke the deportation order which was refused on 18 November 2021 on the basis he had not demonstrated there had been a material change in the circumstances which justified the making of the order and that the criteria for making the deportation order were still satisfied. The above respondent's position before the Judge was that there had been a material change of circumstances since the deportation order was made, such that his continued exclusion from the UK was not in accordance with the Immigration (EEA) Regulations 2016 ('the 2016 Regulations') and was disproportionate, on the basis he is in a genuine subsisting relationship with a British citizen living in the UK who has two young children from whom he is separated as a result of the deportation order. The above respondent also stated he had addressed his offending behaviour, had not offended for many years, and that there was reliable evidence his past offending was as a result of trafficking although he had, in any event, provided evidence which demonstrated that he did not pose a real risk of reoffending or causing harm on return to the UK.
5. Having considered the evidence the Judge sets out findings from [26] of the decision under challenge.
6. The Judge notes at [30] that it was accepted between 1 July 2011 and 10 February 2015 the above respondent was convicted on 10 separate occasions for 23 offences including robbery, theft, possession of class A controlled drugs, possession of a bladed article, driving offences, and offence against the court such as breaching court orders and failing to surrender to the court. It was not disputed before the Judge that the deportation order was lawful or that the criteria for making the order were not satisfied.
7. The Judge found some force in the submission made on the above respondent's behalf that there was evidence his early offending was as the result of him being trafficked into criminal gangs from a young age. At [36], whilst not being satisfied that the above respondent had demonstrated to the required standard that he was the victim of trafficking, it was accepted that his vulnerability led to his introduction to, and involvement in, criminal gangs in Birmingham.
8. The Judge considered whether the above respondent continues to represent a genuine, present and sufficiently serious threat to a fundamental interest of society in the UK from [40].
9. Judge Baker's starting point was the earlier decision of Judge Smith, but the Judge also found that assistance could be obtained from the various expert reports, including those from Dr Lisa Davies a Consultant Forensic Psychologist, Mr Gravett, Trafficking expert, and Ms Brown an Independent Social Worker. From [49] the Judge writes:
  49. After carrying out a structured assessment of the risks using a combination of clinical assessment and analytical tools, Dr Davies concludes that the risk of reoffending and serious harm posed by the Appellant is no longer 'medium' but is now low, providing that the Appellant is abstinent from the problematic peer

associations he has engaged in in the past (HB 620). In other words, as long as he continues to avoid the influence of criminal gangs, he poses a low risk of returning to his criminal past. In this regard, I accept that the Appellant is motivated to do this, and that his partner gave a credible account of their intention to relocate away from Birmingham, to an area where she has familial ties, to ensure a physical separation from the Appellant's past. I also accept that Dr Davies indicates that the low risk of reoffending and harm has been maintained since she first assessed the Appellant in 2019, and that this is a good indicator of his future risk (HB 113).

50. Dr Davies notes that the Appellant displays pro-social attitudes and makes no attempts to justify or excuse his engagement in criminal activity, and appears to have successfully desisted from offending behaviour since the distance was placed between him and gang affiliations (HB 623). I find this to be consistent with the written account provided by the Appellant and the oral evidence from his partner, as well as the documentary evidence provided about the life that he has made for himself since his removal from the UK.
51. As a result of the changes made in the Appellant's life since the previous decision, Dr Davies concludes that the Appellant no longer presents a serious threat to public security (HB 621). She does not accept without question the conclusion of Mr Gravett, but considers that the Appellant's mental health difficulties and her diagnosis of PTSD, are directly attributable to his experiences of trauma as a result of his recruitment and exploitation by gang associates, and opines that his current mental health issues are "entirely consistent with his reported history" (HB 616). Whilst she makes conclusions consistent with those made by Mr Gravett, in my judgment, she only does so after very careful consideration of all of the evidence, and analysis based on her experience and knowledge (HB 617-619).
52. In my judgment, considering all of the relevant factors as discussed above, notwithstanding the issues raised by the Respondent in her refusal decision, review and during the hearing, I find that I am satisfied that the Appellant no longer poses a real risk of re-offending. He has clearly recognised the factors that led to his offending behaviour in the past, and has made substantial and positive efforts to change his life since his deportation. Whilst of course, it is easier to extract himself from the clutches of gang life when he is not in the UK, he has in my judgment, addressed the issues that led to his vulnerability, and has made some effort to turn his life around, including finding legitimate employment and working where he is able, and associating with hard-working and responsible friends such as those who have provided letters in support of his appeal. It is at least some seven years since he offended, and almost five years since he made what he appears to accept was a foolish decision to return to the UK in breach of the deportation order. He clearly has the maturity to understand that he may need the support of others at times, and is now willing to seek this support when necessary, and has acknowledged his vulnerabilities to himself and to those closest to him.
53. For the reasons indicated above, I find that the continued exclusion of the Appellant is no longer justified under the regulations. Whilst the Appellant's conduct as disclosed by his offending, is in no way to his credit, I am considering the likely future conduct of the Appellant. I accept on the evidence before me, that his offending must be considered in the context of my findings about his vulnerability and exploitation by members of criminal gangs, and that he has been removed from those circumstances by his very deportation. He has demonstrated that he has not returned to such criminal associations and activity, and that in the circumstances that now exist, he is in my judgment highly unlikely to return to his past offending, particularly given the protective factors present in his relationship with his partner and children, and the "real purpose" that the Appellant told Ms Brown that they have given his life (HB 529 para 3.58).
54. Whilst I accept that the deportation order was justified at the time of its making, and that the criteria for making such an order was satisfied at the time of his previous appeal, I cannot find that the Appellant continues to pose a genuine, present and sufficient serious to the fundamental interests of society, for the reasons I have given.
55. That the regulation 27(5)(c) criterion is not met is sufficient for the purposes of my decision, and I do not therefore need to go further, as the risk in this case is not

made out to the required standard. In those circumstances, the decision must be disproportionate.

56. I say at this stage, that whilst I do not attribute any blame to the Appellant's children for the situation they find themselves in, I would not necessarily have been persuaded that the Respondent's decision was a disproportionate interference in the Appellant's human rights as a result of his relationship with either his partner or his children, given that he and his partner chose to develop a relationship after his deportation, and then chose to have children in the full knowledge that the Appellant had no legal right to return to the UK. On the evidence before me, I would not have found that this alone was a factor that outweighed the public interest in his continued exclusion. However, as a result of my findings in relation to the level of risk he now poses, I am not required to consider this aspect of the Appellant's claim further, as I have found that the decision to continue his exclusion is not proportionate in EU law terms.
57. I confirm that in making the above findings, I have considered all the evidence even if I have not referred to it directly. I have considered all of the evidence 'in the round' and have given the evidence anxious scrutiny and reflected on that evidence in light of the submissions from Miss Tasnim and Ms Patyna.

#### Conclusion

58. I find that the Respondent's decision is no longer justified on grounds of public policy, public security or public health and therefore is not in accordance with the Immigration (European Economic Area) Regulations 2016.
10. The Secretary of State sought permission to appeal asserting the Judge erred as low risk was not the same as no risk and that in finding the above respondent posed a low risk of reoffending the Judge failed to consider the seriousness of the consequences of reoffending in line with Kamki [2017] EWCA Civ 1715. It was submitted the mere passage of time is insufficient to demonstrate the above respondent did not pose a threat to the fundamental interests of society in light of the seriousness and consistency of offending, that the reasons for the deportation order being imposed had not materially changed, that there was no finding showing the above respondent felt any remorse in terms of the impact of his actions on those who directly or indirectly suffered. In relation to proportionality the above respondent was currently in the USA and it was submitted in light of his offending and willingness to attempt to re-enter in breach of the deportation order that maintaining the order was appropriate in the interest of the fundamental interests of society and that the Judge had materially erred.
11. Permission to appeal was granted by another judge of the First-tier Tribunal in the following terms:
1. The application is in time
  2. The grounds assert that the Judge erred in respect of the assessment of risk in light of the previous offending. Paragraphs 52.53 and 54 are said to be the offending paragraphs.
  3. I have thought long and hard about this. The Judge's decision is one many Judges would not reach but equally some would. That does not mean it is wrong or that he has fallen into error.
  4. On the other hand, the threshold for permission is low, it is mere 'arguable' as an error.
  5. Having considered the position and having read the judgment again, on balance the grounds are arguable as errors.
  6. I would not think there are significant chances of success but that is not the test at this stage
  7. Permission is granted.

Signed I D Boyes  
Judge of the First-tier Tribunal  
Date: 16.12.22

12. The above respondent has filed a Rule 24 reply dated 18 July 2023 opposing the appeal arguing that the determination contains no error of law. The operative part of that document is in the following terms:
7. Properly read, the SSHD's grounds identify no error of law. The grounds amount to a mere disagreement with the FtT's conclusions and an attempt to re-litigate the appeal before this Tribunal. See, as an example, §7, where the SSHD re-argues that 'With regard to proportionality, the appellant is currently in the USA. It is submitted that in light of the appellant's offending and willingness to attempt to re-enter the UK in breach of a deportation order that maintaining the deportation order is appropriate in the interests of the fundamental interests of society' but fails to identify any error in the FtT's approach to proportionality under EU law, as transposed.
  8. The appeal is therefore in the category of disagreement which cannot amount to an error of law, highlighted by MM (Lebanon) and AH (Sudan).
  9. There is no error in the FtT's approach to or conclusions as to risk of re-offending and the level of threat now posed by R. In particular:
    - h. The SSHD does not make it clear what passage or principle in *Kamki v The Secretary of State for the Home Department* [2017] EWCA Civ 1715 she relies upon. The approach in the Determination is not inconsistent with that in *Kamki*. In that case, the issue around re-offending was fact-specific and concerned references in the OASys report to low risk of overall re-offending but high risk posed by the Appellant to vulnerable females, an issue which does not arise here: see [10], [13], [35].
    - i. The FtT plainly made its findings having regard to all the matters on which SSHD relied, including the previous history of R's offending (see e.g. §35). The SSHD does not - rightly - argue that the FtT erred in the summary of R's offending history nor does the SSHD identify any other flaw in FtT's analysis of it;
    - j. In assessing whether R posed the requisite level of threat the FtT further correctly directed itself that his offending was a relevant matter (§40) and had regard to its nature and seriousness (§41);
    - k. The FtT also had regard to all other matters which could be considered adverse to R e.g. his attempted re-entry in breach of the deportation order in 2017 (§42) and previous findings of FtT at the time the deportation order was made (see e.g. §46);
    - l. The FtT properly reminded itself of the need to have regard to Regulation 27 and Schedule 1 of the Immigration (European Economic Area) Regulations 2016 ('EEA Regs')(§40). The FtT applied the correct legal test and so its conclusion is sound in law: *KO (Nigeria)*, cited above, relied upon.
    - m. None of the following rational and well-reasoned findings of the FtT are challenged: (i) that R was a vulnerable young man when he first moved to the Birmingham area as a 10 year old child and has vulnerabilities which exposed him to the influence of others, (ii) his vulnerabilities led to his introduction to and involvement in criminal gangs, (iii) R's account about how he first became involved with criminal gangs and the influence that they had over him throughout the time that he was offending, is entirely consistent with the characteristics of exploitation,

as detailed by Mr Gravett, the trafficking expert and there was an element of grooming (§36); (iv) R had given a wholly consistent and plausible account of the reasons why he continued with these associations, even after his first deportation appeal had been allowed (§39); (v) R had not offended for seven years and now had a family to look after (§42); (vi) R spent some considerable time reflecting on his offending behaviour and trying to rebuild his life outside of the UK (§42);

- n. Thus, the FtT was entitled, based on that evidence, to conclude that there was a material change in circumstances since the deportation order was first made and R no longer posed the requisite level of threat;
- o. The grounds are silent as to the expert evidence which was before the FtT and do not question FtT's approach to that evidence. It is unimpeachable;
- p. It is plain that the FtT did not just accept R's account at face value but expressly stated it did so with 'some cynicism' (§46). However, the FtT rationally concluded that it was assisted by the evidence provided in the expert reports (see §47 seq);
- q. It would have been an error if the FtT had assessed risk of reoffending solely with reference to past criminality and not the more up to date expert evidence;
- r. FtT gave detailed reasons arising out of the evidence, prepared over the course of some three years (inc. a report dated 27 June 2022, near-contemporaneous to the hearing) why it considered R no longer to pose a sufficient level of threat: see e.g. §47. SSHD takes no issue with the findings that: the reports had 'been prepared after careful consideration of all of the evidence', each provided 'a balanced, comprehensive and independent assessment' (§46), the experts having recognised and acknowledged their duty to the Tribunal, and that in particular Ms. Davies, the forensic psychologist who assessed reoffending risk did not simply rely on R's account. As noted by the FtT, Ms. Davies found the risk of reoffending in R's case to be low (§49) and further found (§50) that R 'displays pro-social attitudes and makes no attempts to justify or excuse his engagement in criminal activity, and appears to have successfully desisted from offending behaviour since the distance was placed between him and gang affiliations' and he no longer poses a serious threat to public security (§51).
- s. The FtT was entitled to find (§50) the expert assessment to be consistent with R's written account and oral evidence from his partner (whose evidence the FtT found entirely credible at §44). The SSHD does not challenge FtT's approach to any of these matters;
- t. It is thus entirely wrong to suggest that the FtT reached its conclusion on reoffending with reference to the passage of time alone;
- u. It follows that the SSHD has failed to show that the Determination contains a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence so that the decision could not reasonably be explained or justified, Terzaghi, cited above, relied upon;
- v. Finally, the FtT provided a detailed and careful summary of its findings as to the threat posed by R (§52) and the FtT's overall conclusion that deportation is no longer justified under the EEA Regs (§§53-54) is fully reasoned and sustainable.

10. It follows that the Determination contains no error of law. The Tribunal is asked to dismiss SSHD's appeal

### Discussion and analysis

13. The key question in any deportation appeal under the 2016 Regulations or before is whether, in the context of the available degree of protection, the individual poses a threat to one of the fundamental interests of society. That was established in the earlier appeal by Judge Green to be met as it was found there was a real risk of the above respondent continuing to offend and therefore cause the type of harm that resulted from his offending.
14. The Judge does not dispose of the appeal solely on basis of the passage of time and clearly considered the evidence with the required degree of anxious scrutiny including the expert reports. It is not made out it is a finding outside the range of those reasonably open to the Judge that the reason for the above respondent's offending is inextricably linked to his involvement with the criminal gangs within Birmingham when he was a young man and vulnerable. The Judge was entitled to conclude that as that element was no longer present the risk of reoffending had abated.
15. The Judge does not say there is no risk of reoffending and accepts there is a low risk, but with the other factors that were identified in the reports and evidence accepts that there is no real risk of his offending in practice.
16. There is merit in the Rule 24 response that a number of the points raised in the appeal appear to be disagreements with the conclusions reached by the Judge rather than identifying arguable legal error.
17. The grant of permission refers to the fact that other judges may make this decision in this form, others may not. That does not amount to legal error. The question, as always, is whether the decision is within the range of those reasonably open to the Judge on the evidence. It has not been established by the Secretary of State on the facts of this appeal that the decision is not within the range of those reasonably available to the Judge.
18. Having considered the evidence the Judge makes a number of findings supported by adequate reasons. It is as a consequence of those findings that the Judge eventually concludes that the appeal should be allowed. The findings have not been shown to be irrational, contrary to the evidence, or not available to the Judge on the facts or in law.
19. The Court of Appeal have reminded appellate judges, including themselves, that they should not interfere with a decision of a court or tribunal below unless a clear legal error material to the decision under challenge has been established. I find in this appeal it has not. Whilst the Secretary of State may not like the decision, as many members of the public may not either, it is a decision that is sustainable in law.
20. The above appellant has failed to establish legal error material to the decision to allow the appeal sufficient to warrant the Upper Tribunal interfering any further in this matter.

### **Notice of Decision**

21. No error of law in the decision of the First-tier Tribunal is made out. The determination shall stand.

**C J Hanson**

**Case No: UI-2022-006087**  
**First-tier Tribunal No: EA/50253/2022**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**20 June 2023**