



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-003676

First-tier Tribunal No:
DA/00010/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 2nd of July 2024

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR
DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

DZHUNEYT TAMER SHEFKET
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: In person

For the respondent: Ms A Ahmed, Senior Presenting Officer

Heard at Field House on 26 June 2024

DECISION AND REASONS

Introduction

1. Mr Shefket ("the appellant") is a Bulgarian national, born in October 1993. This is the re-making of the decision in his appeal against the respondent's decision to make a deportation order under the Immigration (European Economic Area) Regulations 2016 ("the 2016 Regulations"), dated 5 January 2022. That decision was based on the undisputed fact that the appellant had been convicted in January 2012 of murdering his mother and younger brother in Bulgaria in 2011, offences for which he had been sentenced to 7 years and 4 months' imprisonment.
2. The appellant's appeal to the First-tier Tribunal had been allowed by First-tier Tribunal Judge Moffat by a decision issued on 21 July 2023. The respondent challenged that decision. On appeal to the Upper Tribunal, Deputy Upper Tribunal Judge Saini found that Judge Moffat had materially erred in law and that her decision should be set aside, with certain findings preserved. The case was then set down for a resumed hearing on 8 April 2024. However, due to national train strikes, the appellant was unable to attend and that hearing was adjourned, with directions (the adjournment decision and accompanying directions notice is annexed to this re-making decision).
3. The case was re-listed before us on 26 June 2024.

The decision of the First-tier Tribunal

4. Judge Moffatt found that the appellant was only entitled to the lowest level of protection under the 2016 Regulations. Having considered a number of factors, she concluded that the respondent had failed to demonstrate that the appellant presented a genuine, present, and sufficiently serious threat to one or more of the fundamental interests of society, with reference to regulation 27(5) of the 2016 Regulations.

The error of law decision

5. Judge Saini, whose error of law decision was issued on 7 February 2024, concluded that although Judge Moffatt had been entitled to make the

findings she did, there had been a failure on her part to consider whether the appellant's offences were so serious as to demonstrate, on that basis alone, the existence of a genuine, present, and sufficiently serious threat, with reference to the so-called Bouchereau exception.

6. Judge Saini decided that the findings made by Judge Moffatt, insofar as they went, should be preserved. Although he did not expressly list those findings, it is clear enough that they were to be found in [64]-[96] of her decision.
7. Judge Saini's error of law decision is annexed to this re-making decision. It is important that the two are read together.

The legislative framework

8. We have concluded that it is unnecessary to set out large parts of the 2016 Regulations. The core provisions are contained within regulation 27, which can be summarised here:

27(1) the decision to deport must, in this case, have been taken on the grounds of public policy and/or public security.

27(5)(a) if grounds of public policy and public security are demonstrated, the decision must nonetheless comply with the principle of proportionality;

27(5)(b) the decision must be based exclusively on the personal conduct of the appellant;

27(5)(c) the personal conduct of the appellant must represent a "genuine, present and sufficiently serious threat" affecting one of the fundamental interests of society;

27(5)(d) matters isolated from the particular facts of the case and/or generalised considerations do not justify a decision to deport;

27(5)(e) a person's criminal convictions do not in themselves justify the decision;

27(6) a wide variety of factors must be taken into account, including age, health, length of residence, and social and cultural integration;

27(8) public policy and public security requirements involve consideration of the fundamental interests of society, including in particular the considerations set out in Schedule 1 to the Regulations.

The Bouchereau exception

9. This particular part of the law relating to the deportation of EEA nationals has already been explained in Judge Saini's error of law decision and the adjournment and directions notice of Upper Tribunal Judge Norton-Taylor referred to earlier.

10. For ease of reference, we reiterate the following essential points.

11. First, the Bouchereau exception originates from a judgment of the Court of Justice of the European Union: (R v Pierre Bouchereau [1977] EUECJ R-30/77). It can be described in the following way:

Normally, in cases under the Regulations the risk of harm to society that a person might represent cannot be based only on the fact that they were convicted in the past (see regulation 27(5)(e)). However, where the conviction was for a very serious offence, that conviction may be enough by itself to show that the person is a risk now.

12. Second, the exception to the general rule will only exist in rare cases. The past offending must be very serious. There is no definitive list of what type of offence might engage the exception, although the domestic cases have referred to "the most heinous of crimes", those with "very extreme" facts or are "repugnant to the public", and "grave offences of sexual abuse or violence against young children": an overview of the case-law was provided by the Court of Appeal in SSH D v Robinson [2018] EWCA Civ 85.

13. Third, the courts in the United Kingdom have found that the exception does apply in this country and that it does apply to cases involving the 2016 Regulations.

14. Fourth, it is important to appreciate that the exception involves looking back to the offending; it is not concerned with the fact that an

individual might not have committed any further offences since, or with fact that they might have subsequently established a law-abiding life in their home country or another.

15. Fifth, it is for the respondent to demonstrate that the exception applies in any case.

Procedural issue: the respondent's attempt to revisit the error of law decision

16. In her skeleton argument, which was provided very late in the day, Ms Ahmed contended that Judge Saini was wrong to have concluded that Judge Moffatt had been entitled to make the findings she did, as far as they went and that some of the findings should not have been preserved: [12]-[18] of the skeleton argument.

17. Having considered those written submissions and heard what Ms Ahmed had to say at the outset of the resumed hearing, we rejected her application. *First*, except in very unusual circumstances, the error of law decision will not be revisited after it has been issued. A party unhappy with that decision can attempt to appeal to the Court of Appeal. *Second*, in any event the points made are simply disagreements with the reason decision of Judge Saini who had clearly directed himself correctly to the necessary judicial restraint before interfering with findings of the First-tier Tribunal and was entitled to conclude as he did. *Third*, the application was made far too late in the day. Issues relating to preserved findings could and should have been addressed at the error of law hearing, or at the latest, in the respondent's response of 22 May 2024 to the directions issued on 12 April 2024. *Fourth*, the preserved findings do not create any artificiality or incompatibility with the core issues with which we are concerned. They do not preclude the respondent from making his case on the Bouchereau exception and a proportionality exercise under the 2016 Regulations or in respect of Article 8 ECHR ("Article 8")

Procedural matters: the appellant as a litigant in person

18. The appellant has been unrepresented throughout the appellate process. We have taken every opportunity to ensure that he understands the proceedings and was able to participate to the best of his ability, notwithstanding the absence of legal representation.
19. We are satisfied that the appellant has not been materially prejudiced by the lack of legal representation and we are satisfied that he has fully understood the nature of the case made against him by the respondent and the issues with which we are concerned when making a decision on his appeal.
20. We have taken account of the following considerations. There has been no suggestion in the past that the appellant was prejudiced by the lack of legal representation, or that there had been any unfairness in this regard. The appellant is clearly an intelligent and articulate individual. His English is very good: this much was clear from our interactions with him, together with the fact that he is employed in a role which requires good communication skills. He has received all relevant materials pertaining to his appeal in the Upper Tribunal and we are satisfied that he has been able to read and understand their content.
21. We are satisfied that the appellant understood the particular nature of the Bouchereau exception.

The issues

22. In light of the above, we set out the issues with which we are concerned in this re-making decision. They essentially reflect what was set out in the adjournment decision and directions notice issued on 12 April 2024.

Issue 1: can the respondent demonstrate that the Bouchereau exception applies in this case?

Issue 2: if the respondent cannot show that the Bouchereau exception applies, then the appellant will succeed in his appeal because of the preserved findings;

Issue 3: if the respondent can show that the Bouchereau exception applies, we will then have to go on and assess whether the decision to deport the appellant to Bulgaria is proportionate under the 2016 Regulations (which mirrors EU law in this regard);

Issue 4: if we decide that the decision is not proportionate, then the appellant will succeed in his appeal;

Issue 5: if we conclude that the decision is proportionate, the appellant's appeal will fail under the 2016 Regulations;

Issue 6: we will, for the sake of completeness, address human rights under Article 8.

The evidence

23. We have carefully considered all of the materials before us. These have included the bundles previously provided by the appellant and the respondent in the First-tier Tribunal proceedings, together with the appellant's email of 22 May 2024.

24. The appellant gave oral evidence. This was done in English and at times with the assistance of a Bulgarian interpreter. We are entirely satisfied that the appellant understood all of the questions put and was able to provide appropriate answers. No confusion was caused by the intermittent use of the Bulgarian interpreter.

25. We will address certain aspects of the oral evidence when setting out our findings, below.

The parties' submissions

26. Ms Ahmed relied on her skeleton argument, the respondent's response of 22 May 2024, and the deportation decision dated 5 January 2022. She submitted that the Bouchereau exception did apply. The appellant's offences were so serious as to place them within that rare category. Although there was no detailed evidence as to the precise circumstances of the offences, what was known was sufficient. The appellant's evidence that there was "no real motivation" for the offences increased the seriousness of the criminality. Ms Ahmed also submitted

that the deliberate concealment of the convictions when applying for leave under the EUSS in 2019 exacerbated the past conduct. She submitted that the fact that the appellant was 17 at the time of the offences did not significantly mitigate the situation.

27. On the issue of proportionality, Ms Ahmed submitted that much of the evidence provided by the appellant was not credible. There was an absence of evidence from other family members. In any event, there were no features of the appellant's current circumstances which would render deportation disproportionate, whether under EU law or Article 8 ECHR. She accepted that section 117C of the Nationality, Immigration and Asylum Act 2002 did not apply in this case because the appellant was not a "foreign criminal" under section 117D.

28. The appellant spoke fluently and articulately when addressing us directly. He confirmed that he had not challenged the prosecution case against him in Bulgaria and restated his early evidence that there was "no real motivation" for the offences. He stated that he had undertaken an anger management course whilst in prison in Bulgaria and he complied with parole conditions. He regarded his adult life as only having started once he came to the United Kingdom in 2017. He had set up a law-abiding life in this country and was a trusted person. He confirmed the support provided by his father and stepmother and the absence of any criminal conduct in this country. He confirmed his evidence that he had told his current employer about the convictions. He understood what the respondent was saying about the seriousness of the offending, but he urged us to consider his overall circumstances, in particular the life he has created in the United Kingdom over the last seven years or so.

29. At the end of the hearing we reserved our decision.

Findings and conclusions

Issue 1: the Bouchereau exception

30. We re-emphasise the fact that we have considered all of the materials before us with care. We have taken full account of the

appellant's lack of legal representation, but also bear in mind the assessment we have made in paragraphs 18-21, above, as to his understanding of proceedings and ability to present his evidence.

31. We also of course bear in mind the preserved findings of Judge Moffat. For the avoidance of any doubt, we set these out here:

(a) The appellant only has the lowest level of protection under the 2016 Regulations: [64] of Judge Moffat's decision;

(b) The appellant was in fact convicted on 12 January 2012 of murdering his mother and six year old brother. The appellant used a knife. He telephoned the emergency services. He accepted responsibility for the murders and pleaded guilty. He was 17 years old at the time of the offences: [65], [76] and [79];

(c) The appellant has not been involved in any criminal conduct whilst in the United Kingdom: [77]-[78];

(d) The appellant deliberately concealed the fact of his conviction when applying for leave under the EUSS in 2019, albeit that there was "no malevolence behind that decision". The appellant had not wanted to "disrupt" his life in this country: [82] and [88];

(e) The appellant undertook a course and/or group work for violent offenders whilst in prison in Bulgaria and he was granted early release on parole: [86] and [95];

(f) Since being in the United Kingdom, the appellant has "matured emotionally and physically", has consistently been in employment, and has the support of his father: [93]-[94];

(g) The appellant did not present a genuine, present, and sufficiently serious threat to one or more of the fundamental interests of society (absent any consideration of the Bouchereau exception): [96].

32. We have not been provided with very much, if any, additional evidence as regards the offences themselves. The appellant reiterated evidence presents previously given that he had "no real motivation" for

the murders. He was adamant that he could not recall the specific events, except that he knew that his brother was “scared”.

33. We must make findings on the evidence we have, even where it is sparse. It is quite clear that the appellant murdered his mother and six year old brother with a knife. It is also clear that he placed his brother’s body on the roof of the house. We cannot know who he killed first and whether the second victim witnessed the murder of the other. The appellant’s evidence is that he simply could not remember the events of that evening. In one sense, this does not matter for our purposes because, on any rational view, the acts of violence were self-evidently extreme and precise details would probably only have exacerbated our view of their severity. We cannot be sure as to whether the appellant has lied about his inability to recall the events, or whether there has been some form of amnesia. There is no medical evidence to support the latter explanation. On balance, we find that the respondent is able to demonstrate that the appellant has deliberately chosen not to recount his actions at the time. It may well be that he does not wish to remember what happened and we appreciate that he has genuinely sought to move on in many regards from his past actions. However, it is of concern that there is still a significant element of avoiding full responsibility for the past actions. In any event, this particular aspect of the evidence is not of great significance in our overall assessment of the severity of the offences. The basic facts speak for themselves.

34. As to the reasons for the murders, we have nothing but the word of the appellant: “there was no real motivation”. We are bound to say that we agree with Ms Ahmed’s contention in her skeleton argument that this seemingly candid statement “adds to the especially horrifying facts of this case”. On the face of it, it would appear as though the appellant carried out the murders for no reason at all. If that is true, it indicates a highly concerning factor pertaining to both the past events and the current situation.

35. Is the appellant being truthful about why he killed his mother and younger brother? He told us that his father and mother had been getting on fairly well, although there appeared appear to be the usual stresses relating to work pressures and suchlike. There has never been any indication of, for example, infidelity or any other conduct by his mother which might have created anger or resentment (we make it abundantly clear that nothing justifies killing another individual, absent a legally recognised defence).
36. The appellant might have been lying about the absence of “any real motivation”. However, he has had ample opportunity to explain his actions and has maintained his position throughout.
37. We find that the respondent has demonstrated that the appellant in fact murdered his mother and younger brother for no apparent reason at all.
38. We find that the murders were of a particularly grave nature. They were carried out in cold-blood. Extreme violence must have been used. There is no suggestion at all that the victims were anything other than entirely defenceless. The killing of a young child, whether related to the perpetrator or not, represents an extreme factual element.
39. We have considered whether the exceptionally serious offences were in any way mitigated by the appellant apparently calling the emergency services and then pleading guilty. It is in our view incongruent that on the one hand the appellant claimed to have called the services, whilst on the other repeatedly stating that he could not recall events on the evening of the offences. That would appear to be a position of ‘picking and choosing’, as it were. Judge Moffat appears to have accepted that the appellant did make the telephone call and we are prepared to proceed on that basis. It does, however, reinforce our view that the appellant has been untruthful about his claimed inability to recall other events on the evening on the evening in question. We reiterate the severity of the offences themselves. Overall, the fact that the appellant

called the emergency services does not materially undermine the respondent's case on the Bouchereau exception.

40. We are also prepared to accept that the appellant did not challenge the prosecution case and did plead guilty to the charges of murder. We do not regard this as being of any real significance. It is quite clear that the appellant was guilty of the crimes. There is no suggestion of improper legal advice or any misconduct on the part of the Bulgarian authorities, or indeed in respect of the judicial process in that country. Again, this aspect does not materially undermine the respondent's ability to rely on the Bouchereau exception.

41. We have considered whether there was any mitigation by way of the appellant's state of mind at the time of the offences. We have no medical evidence before us as to the appellant's mental health at the time of the offences. Indeed, the appellant has not suggested that he suffered from any conditions which might conceivably have mitigated the severity of what he did. We find that mental health plays no part in our consideration. For the sake of completeness, the appellant has previously confirmed that he was not misusing drugs or alcohol at the time of the offences and we find that to be the case.

42. We have considered whether what appears to have been a relatively short custodial sentence is indicative of significant mitigating circumstances. We have no evidence as to the sentencing structure for murder within the Bulgarian criminal justice system. It might be that the appellant's age at the time played a part in the length of sentence imposed. We do not intend to unduly speculate, however. We do not consider that the sentence imposed significantly reduces the gravity of the offences themselves.

43. We have considered the appellant age at the time of the offences. It is a fact that he was not an adult. This has some relevance, but we note that he was approaching adulthood. We also have regard to the case cited by Ms Ahmed at [29] of her skeleton argument; Bouchelkia v France [1997] ECHR 1 (29 January 1997). In that case, the individual had

been convicted of aggravated rape, an offence committed when he was 17 years old. At [51], the European Court of Human Rights concluded that the individual's age did not "in any way detract from the seriousness and gravity of such a crime." We find that the same applies in the present case.

44. The appellant was repeatedly asked at the hearing as to whether he had remorse/regret for his past actions. He told us that he did and had felt this over the years. He said that he had lived with this in respect of himself and his family members. Ms Ahmed was right, however, to point out that expressions of remorse/regret had not previously been set out clearly at any stage. We found the appellant's oral evidence to be somewhat evasive on this point: it seemed as though he could not quite bring himself to simply say that what he had done was dreadful and how sorry he was. Having said that, it is probable that he has expressed remorse to family members. In the event, this particular issue does not play a significant part in our assessment, one way or the other.
45. We wish to make an observation at this point. It must have been very clear from the point at which the respondent began investigating the appellant's circumstances that the case concerned very serious offences. It is, to our mind, unfortunate to say the very least that the respondent apparently failed to seek further information from the Bulgarian authorities. We do not know what channels of communication existed, but surely some form of liaison could have occurred. This is a case involving a high degree of public interest. An aspect of that public interest must involve the respondent attributing resources to the case, if not at the very outset then certainly once the deportation decision had been made. The respondent may wish to reflect on this.
46. We turn to the concealment of the conviction when the EUSS application was made in November 2019. It was deliberate and was, we find, made with the connivance of the appellant's father. Judge Moffat found that there was "no malevolence" attached to the omission. That was a generous interpretation of the evidence, but one which has been

found to be sustainable and we do not go behind it. Having said that, it is a simple fact that the appellant (together with his father) consciously chose to withhold disclosure of his convictions. The appellant is an intelligent individual and was undoubtedly aware that such disclosure could, in his words, “disrupt” his chances of starting a new life in United Kingdom. Disclosure would very probably have had that effect and on one view we can understand that the appellant was trying to make a clean break from his past. That does not, however, justify the concealment.

47. We conclude that the concealment was an aggravating feature of the appellant’s overall conduct relating to the conviction. Having said that, we wish to make it clear that this feature is not a necessary element of our overall conclusion on the application of the Bouchereau exception.
48. It is not of any great significance in our assessment, but we are prepared to accept that the appellant has disclosed his conviction to his current employer. We harbour some concerns about this, in the absence of confirmation from the employer (in particular, Mr Hood), but on balance find that a conversation did take place at some point in 2021. This does not detract from what we say about the concealment in respect of the 2019 EUSS application.
49. We now bring together everything we have said on the application of the Bouchereau exception. We remind ourselves of the matters previously set out at paragraphs 9-15, above.
50. The murder of any individual constitutes a very serious crime. The murder of two self-evidently adds to that severity. The fact that the victims in this case were entirely defenceless and members of the appellant’s immediate family constitutes a further level of severity. The fact that one of the victims was a six-year-old child constitutes a further, and significant, element of gravity. That, as we have found, there was no reason for the murders (insofar as there could ever be a “reason” for any murder) constitutes a final and striking feature of this case.

51. We conclude that the present case is one of those rare examples of past offending which is so extreme as to, in and of itself, demonstrate that the appellant represents a genuine, present, and sufficiently serious threat to the fundamental interests of the United Kingdom. The crimes can properly be categorised as “repugnant to the public, of the most heinous nature, and especially grave. The interests of society which are engaged include in particular maintaining public confidence in the ability of the authorities to take removal action against EEA nationals with a conviction and protecting the public.

52. We conclude that the respondent has demonstrated that the Bouchereau exception applies in the appellant’s case. This conclusion is based on the offences alone. The concealment of the conviction by the appellant in the 2019 EUSS application simply adds to that conclusion.

Issue 2

53. Given our conclusion on Issue 1, Issue 2 does not arise.

Issue 3: Proportionality under the 2016 Regulations

54. The Bouchereau exception applies, but this is not the end of the appellant’s case. Regulation 27(5)(a) now requires us to consider the question of whether the respondent’s decision to deport the appellant is proportionate.

55. In addressing that question, we direct ourselves to the case of R (Lumsdon) v Legal Services Board [2015] UKSC 41. There are two questions: first, is the measure in question suitable or appropriate to achieve the objective pursued?; Second, is the measure necessary to achieve that objective?

56. The measure in question here is the ability of the respondent to deport the appellant. In our judgment, that measure is both suitable and appropriate to achieve the objective of protecting the public and/or maintaining the public’s confidence in the respondent’s ability to take action against those with convictions, particularly where the convictions relate to offences such as those in this case.

57. The second question involves consideration of variety of factors for and against the appellant.
58. In the appellant's favour are the following considerations. He has not been convicted of any offences following those with which we have been concerned. He has been in the United Kingdom for a not insignificant period of time. We accept that he has indeed built a life for himself in this country. We accept that he has been in employment throughout his residence and has clearly worked hard and is now in a position of some responsibility. He has contributed to his employers and the economy of United Kingdom more generally. Apart from the effect of our conclusion on the Bouchereau exception, he does not represent a threat to the public. We are prepared to accept that the appellant has had support from his father and stepmother, despite there being no evidence from either in the appeal before us (they did provide evidence in the First-tier Tribunal). We will accept that the appellant has a relationship with his stepsiblings, although there is no reliable evidence as to its strength. It is clear enough to us that the appellant sees his life now as being rooted in United Kingdom and that he does not wish to return to Bulgaria. The appellant does have real integrative links with this country. It is probable that he does not have any regular contact with people in Bulgaria. Although the appellant is no longer in a relationship with his former partner, we accept his evidence that this was a genuine relationship whilst it lasted and that they remain friends. All in all, the cumulative weight of the positive considerations is relatively significant.
59. Against the appellant are the following considerations. The consequence of our conclusion on the exception is that the appellant does represent a genuine, present, and sufficiently serious threat to the fundamental interests of society. The circumstances surrounding the offences, which in turn feed into the threat posed in this country, are such that the public interest is very powerful indeed. There is no question of formal or organised rehabilitation in United Kingdom in the sense of courses relating to the past offending. Thus, deportation to Bulgaria would not interfere with such mechanisms. On the facts of this case,

there are no alternative means by which the respondent could effectively achieve the objectives pursued. For example, the respondent had no power to impose the type of stringent conditions which might apply to a person released on licence in this country following conviction for similar offences. Finally, if it is necessary under the proportionality heading at this stage, we would also rely on what is said at paragraph 76, below.

60. When all of the relevant circumstances are put together, we are satisfied that the measure adopted by the respondent is necessary to achieve the objective of protecting the public and maintaining confidence in the ability of the authorities to take effective action against individuals such as the appellant.

Issue 4

61. Given our conclusion on Issue 3, Issue 4 does not arise.

Issue 5: the appellant's appeal under the 2016 Regulations

62. We have concluded that, on the basis of the Bouchereau exception, that the appellant represents a genuine, present, and sufficiently serious threat to one or more of the fundamental interests of society. We have also concluded that the respondent's decision to deport the appellant is proportionate.

63. Accordingly, the appellant's appeal must fail insofar as the 2016 Regulations are concerned.

Issue 6: Article 8 ECHR

64. It is appropriate to consider Article 8 as it was addressed in some detail by the respondent in the deportation decision.

65. As fairly conceded by Ms Ahmed, section 117C of the Nationality, Immigration and Asylum Act 2002 do not apply to the appellant. That is because he does not fall within the definition of "foreign criminal" under section 117D(2) of the 2002 Act: see also Cokaj (paras A398-399D: 'foreign criminal': procedure) Albania [2020] UKUT 00187 (IAC) The basis of the respondent's consideration of Article 8 as being that his

deportation would be conducive to the public good, pursuant to the Immigration Act 1971.

66. Section 117B of the 2002 Act does apply.
67. We accept that the appellant has established a private life in United Kingdom over the course of time. He has familial relationships here and has been in constant employment for approximately seven years now. We have found that he regards his life as being in this country.
68. We do not accept that the appellant has family life with other family members in United Kingdom. On the very limited evidence before us, there is nothing to indicate ties going beyond normal bonds of affection. This conclusion makes little difference because we accept that the relationships form an aspect of the private life in any event.
69. The respondent's decision to deport the appellant would clearly constitute an interference with the private life.
70. The respondent's decision is clearly in accordance with the law and pursues the legitimate aim of protecting the public.
71. We turn to the issue of proportionality. This involves a balancing of factors for and against the appellant.
72. We acknowledge that in certain respects the proportionality test under the 2016 Regulations (and EU law) is different from that under Article 8, but the particular considerations set out at paragraphs 58 and 59, above, are clearly relevant and we rely on them at this stage without repeating what has already been said.
73. We acknowledge that the appellant has had permission to be in this country since his arrival in 2017, although that permission has been precarious in the sense that it is not permanent. He has been financially independent and speaks very good English. The appellant has spent important years of his life here. We acknowledge that re-establishing himself in Bulgaria would come with certain difficulties. Apart from practical readjustments, we accept that he would feel anxious (for want

of a better word) as result of what happened when he was last living in that country.

74. In combination, the factors in the appellant's favour carry a relatively significant amount of weight.

75. On the other side of the scales, and for reasons set out previously, the public interest in this case is really very powerful. On the particular facts of this case, it is on any view a matter of very significant public interest that a person with the appellant's history should be deported, unless there are particularly strong countervailing factors.

76. There is no evidence to suggest that the appellant is dependent on his father or stepmother. There is no evidence that they are in any way reliant on him. The appellant has a strong skill set which would assist him in obtaining reasonable employment in Bulgaria. He clearly speaks Bulgarian and his English language ability would be likely to assist his employment prospects in that country. The appellant is healthy. He clearly has a good deal of lived experience in Bulgaria, having left that country when an adult. We consider that the absence of family members in Bulgaria would not represent a significant obstacle to reintegration or the ability to pursue a reasonable private life there: the appellant is a motivated and independent individual. There is no suggestion, or certainly no supporting evidence, that the appellant would face significant difficulties on return as result of his conviction. He has served his sentence in that country and he did not leave in violation of any conditions of his release.

77. Bringing all of the above together, we conclude that the respondent's decision is clearly proportionate under Article 8(2).

78. It follows from this that the appellant's appeal is dismissed on Article 8 grounds as well.

Anonymity

79. The appellant has specifically asked for an anonymity direction to be made at this stage. In his email of 22 May 2024, he stated that a direction would be very important for him as an individual. At the hearing, he explained that he now realises that Upper Tribunal decisions are published on the Internet and that his name becoming known would be difficult for both he and his family.
80. Ms Ahmed opposed the making of an anonymity direction, both in her skeleton argument and in oral submissions. She submitted that there was a strong public interest in the appellant being identified, given the nature of his offending.
81. We have concluded that an anonymity direction should not be made. There is in general a strong public interest in open justice. In the present case, there is a specific public interest in the appellant being identified, given the circumstances of the case and the respondent's desire to deport him from the United Kingdom. We also note that there has been no anonymity direction at any stage of the proceedings so far. Further, there are no additional features of this case which would either require anonymity as a matter of law, or justified as a matter of discretion. For example, the case does not involve vulnerable children, protection issues, or particularly significant mental health considerations.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law and that decision has been set aside.

The decision in this appeal is re-made and the appeal is dismissed on all grounds.

H Norton-Taylor
Judge of the Upper Tribunal
Immigration and Asylum Chamber

Appeal Number: UI-2023-003676
First-tier Tribunal No: DA/00010/2022

Dated: 27 June 2024

ANNEX 1: JUDGE SAINI'S ERROR OF LAW DECISION

DECISION AND REASONS

1. Although this is the Secretary of State's appeal, for ease of reference and comprehension, I shall refer to the parties as they were constituted before the First-tier Tribunal.

2. The Secretary of State appeals against the decision of First-tier Tribunal Judge Moffatt (the "judge") promulgated on 21st July 2023 allowing the Appellant's appeal against the notice of deportation in respect of a deportation order on the grounds of public policy in accordance with Regulation 23(6)(b) and Regulation 27 of the Immigration (European Economic Area) Regulations 2016 ("EEA Regulations 2016").

3. The Secretary of State applied for permission to appeal which was granted by First-tier Tribunal Judge Parkes in the following terms:

"1. The application is in time.

2. The grounds argue that the Judge wrongly criticised the Respondent for not providing more details of the offences and prevented the presentation of a press report, the PNC report should have been sufficient. The nature of the Appellant's offences were such that his past conduct presented a threat to public policy. The murder of his mother and brother fell into that category and were sufficiently extreme. The Appellant's failure to disclose his acts to the Respondent were relevant and the Appellant had not obtained permanent residence.

3. The Judge accepted that the Appellant had not acquired permanent residence. The Judge excluded the press cutting because the Appellant had not read the papers and the information could not be verified. It is difficult to see how the Appellant's offences could be more serious and the facts could be said to speak for themselves. The Judge did find, paragraph 82, that the decision not to tick the convictions box in the application was deliberate albeit not malevolent but if it was to avoid the difficulties it would create for his application the intention to mislead is apparent. It is arguable that the offence committed is so serious that with

regard to the basic level of protection the Judge erred in the assessment made.

4. The grounds disclose arguable errors of law and permission to appeal is granted”.

Error of Law

4. At the conclusion of the hearing I reserved my decision, which I now give. I find that the decision demonstrates material errors of law such that it requires further assessment and re-making in the Upper Tribunal for the following reasons.

5. At the outset, I note that the Appellant accepts that when he was a minor, he was responsible for, and convicted of murder in respect of his mother and 6 year old brother on 10th January 2012 and was sentenced to seven years and four months’ imprisonment in Bulgaria prior to his entry to the United Kingdom on 2nd May 2017.

6. In respect of the Grounds of Appeal, although they are somewhat verbose the Secretary of State’s position can be succinctly summarised as follows. The Secretary of State appeals on the basis that notwithstanding Judge Moffatt’s assessment that the Appellant’s conduct does not represent “a genuine, present and sufficiently serious threat”, pursuant to the decision of the European Court of Justice in R v Bouchereau [1977] EUECJ R-30/77; [1981] 2 All ER 924 at [29], the conduct in the Appellant’s case is said to be precisely the type of conduct that threatens public policy, in and of itself, regardless of any other factors. Therefore, the Secretary of State argues that this case is so serious as to require his removal from the UK which the judge has not considered. In support of that submission the Secretary of State relies upon [85] of Lord Justice Singh’s judgment in Secretary of State for the Home Department v Robinson (Jamaica) [2018] EWCA Civ 85.

7. Turning to the Secretary of State’s notice of liability to deportation and the decision to make a deportation order, both dated 5th January 2022 which have given rise to this appeal (which appear at pages A1-A10 and H5-H18 of the Respondent’s Bundle, respectively), the alternate Bouchereau exception upon

which deportation on public policy grounds is argued as being applicable, is not stated in the explicit terms. For the sake of completeness, I set out page 7 of the Notice and paragraphs 27 to 29 of the decision to deport so that the broad, cumulative position on public policy grounds can be seen:

“Reasons for considering that you may be liable to deportation on public policy, public security grounds We consider your deportation may be justified on grounds of public policy or public security under the EEA Regulations 2016, as saved because in January 2012 you were convicted of 1 offence in Bulgaria.

Overseas convictions

- On 10 January 2012 at Kardzhali District Court Bulgaria you were convicted of Murder and sentenced to 7 years and 4 months imprisonment...

...

27. Schedule 1 of the EEA Regulations 2016, as saved, provides a non-exhaustive list of the fundamental interests of society in the United Kingdom. It is considered that your behaviour is a threat to the following fundamental interests of society:

- maintaining public order
- preventing social harm
- 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
- 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)
- protecting the public

28. Prior to your arrival to the UK you were convicted of murder in Bulgaria. From press records published, specifically by Sofia News Agency, this conviction relates to the double murder of your mother and younger brother, who was 6 at the time of his death.

29. It is the case that you have been convicted of the most serious of all crimes; namely the taking of a human life. The consequences for all those involved in, or touched by, violent crime is enormous. You did not give any thought for the consequences of your actions. Moreover, incidents of this nature can have wider impact upon society in that they create a climate of fear and insecurity in our communities.”.

8. Therefore, in light of these excerpts, the Secretary of State has clearly raised the issue of deportation on public policy grounds; however I record that it would have been eminently more sensible to state in explicit terms that he sought to rely upon the Bouchereau exception so that a Tribunal judge faced with this matter would know that it required disposal given that it is a rare and uncommon position which should be flagged where thought to be applicable (particularly, in fairness to Judge Moffatt).

9. The Grounds of Appeal do not however directly challenge the judge’s findings in respect of the customary assessment she actually has performed in respect of the level of protection that applies, the relevant personal conduct, the alleged assault in Worthing town centre, the murders in Bulgaria, and the non-disclosure of the criminal conviction, and the basis of refusal concerning whether the conduct represents a genuine, present and sufficiently serious threat (as helpfully sub-headed within the judge’s findings at paragraphs 63 to 96). Indeed, the sole umbrage in respect of these paragraphs appears a reiteration of the Secretary of State’s position that the Appellant’s non-disclosure of his criminal conviction is “in itself adverse conduct capable of justifying the appellant’s exclusion under Regulation 27(5)(c)”. This comment does not demonstrate any material error in the decision and has no merit in that it appears to be a disagreement with the judge’s conclusion and an attempt to reargue the Respondent’s original position that the omission to mention the conviction, mentioned already in the deportation decision, is a

matter to be held against the Appellant, rather than demonstrating why the conclusion reached is unlawful. It is clear from paragraph 88 of the judge's decision that the judge was aware of the adverse allegations concerning the failure to disclose the conviction but nonetheless found in the Appellant's favour at paragraphs 82 and 88, and found that there was no malevolence behind the decision not to disclose the conviction and conceal it from the Secretary of State. Whilst that is not a decision that every judge would necessarily take, it is not open to me to go behind that finding that was lawfully open to the judge to reach on the basis of the papers before her and the evidence that she heard from the Appellant in oral testimony, having been cross-examined by a Presenting Officer, and having received closing submissions and reached a decision applying the law. I remind myself of Lord Justice Stuart-Smith's observations on interfering with decisions of specialist tribunals at [77] of *KM v. Secretary of State for the Home Department* [2021] EWCA Civ 693 and, in particular, [30] of Lady Hale's judgment in *Secretary of State for the Home Department v. AH (Sudan) & Ors* [2007] UKHL 49 which reads as follows:

“...This is an expert tribunal charged with administering a complex area of law in challenging circumstances. To paraphrase a view I have expressed about such expert tribunals in another context, the ordinary courts should approach appeals from them with an appropriate degree of caution; it is probable that in understanding and applying the law in their specialised field the tribunal will have got it right: see *Cooke v Secretary of State for Social Security* [2001] EWCA Civ 734, [2002] 3 All ER 279, para 16. They and they alone are the judges of the facts. It is not enough that their decision on those facts may seem harsh to people who have not heard and read the evidence and arguments which they have heard and read. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law. Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently...”.

10. Returning to the Grounds of Appeal and the primary contention that the historic offence in question was sufficient to trigger public policy grounds on

the basis of Bouchereau, as upheld by the Court of Appeal in Robinson; I do find that, notwithstanding the judge's findings which were open to her and which are therefore preserved as far as they go, the judge has failed to consider this alternate basis upon which the public policy consideration can be triggered. It is with that in mind that I turn back to Lord Justice Singh's judgment in Robinson and remind myself of the relevant paragraphs, so far as I see them, which apply to my consideration of this matter.

"22. On 29 April 2004 the European Parliament and the Council of the EU adopted the Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of member states: Directive 2004/38/EC ('the Directive'). That Directive replaced earlier legislation, in particular Directive 64/221/EEC. It is unnecessary for present purposes to set out the specific provisions of the Directive, save for two, on which there was some argument before this Court: Articles 27 and 28.

23. Article 27 provides:

'1. Subject to the provisions of this Chapter, Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health. These

grounds shall not be invoked to serve economic ends.

2. Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.

The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.

...'

24. Article 28 provides:

'1. Before taking an expulsion decision on grounds of public policy or public security, the host Member State shall take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host Member State and the extent of his/her links with the country of origin.

2. The host Member State may not take an expulsion decision against Union citizens or their family members, irrespective of nationality, who have the right of permanent residence on its territory, except on serious grounds of public policy or public security.

3. An expulsion decision may not be taken against Union citizens, except if the decision is based on imperative grounds of public security, as defined by Member States, if they:

(a) have resided in the host Member State for the previous ten years; or

(b) are a minor, except if the expulsion is necessary for the best interests of the child, as provided for in the United Nations Convention on the Rights of the Child of 20 November 1989."

"Issue (3): What is the current status and effect of R v Bouchereau?

68. There was an interesting debate between the parties in this appeal about whether past conduct alone, and 'public revulsion' in particular, may be sufficient to justify deportation of an offender in this sort of case. In that context there was debate about the extent to which the decision of the European Court of Justice ('ECJ') in R v Bouchereau remains good law. That case concerned Directive 64/221.

69. In that case Advocate-General Warner said at p.742:

'The United Kingdom Government ... points out that cases do arise, exceptionally, where the personal conduct of an alien has been such that, whilst not necessarily evincing any clear propensity on his part, it has

caused such deep public revulsion that public policy requires his departure. I agree. I think that in such a case a member state may exclude a national of another member state from its territory, just as a man may exclude from his house a guest, even a relative, who has behaved in an excessively offensive fashion. Although therefore, in the nature of things, the conduct of a person relevant for the purposes of Article 3 will generally be conduct that shows him to have a particular propensity, it cannot be said that that must necessarily be so.'

70. At paras. 27-30 of its judgment the ECJ said:

'27. The terms of article 3(2) of the Directive, which states that 'previous criminal convictions shall not in themselves constitute grounds for the taking of such measures,' must be understood as requiring the national authorities to carry out a specific appraisal from the point of view of the interests inherent in protecting the requirements of public policy, which does not necessarily coincide with the appraisals which formed the basis of the criminal conviction.

28. The existence of a previous criminal conviction can, therefore, only be taken into account in so far as the circumstances which gave rise to that conviction are evidence of personal conduct constituting a present threat to the requirements of public policy.

29. Although, in general, a finding that such a threat exists implies the existence in the individual concerned of a propensity to act in the same way in the future, it is possible that past conduct alone may constitute such a threat to the requirements of public policy.

30. It is for the authorities and, where appropriate, for the national courts, to consider that question in each individual case in the light of the particular legal position subject to Community law and of the fundamental nature of the principle of the free movement of persons.'

71. It is important to recognise that what the ECJ was there talking about was not a threat to 'the public' but a threat to 'the requirements of public policy'. The latter is a broader concept. At para. 28 the ECJ said that past

conduct can only be taken into account in so far as it provides evidence of personal conduct constituting a 'present threat' to the requirements of public policy.' As the ECJ said at para. 29, 'in general' that will imply that the person concerned has a 'propensity to act in the same way in the future' but that need not be so in every case. It is possible that the past conduct 'alone' may constitute a threat to the requirements of public policy. In order to understand in what circumstances that might be so, I consider that it is helpful and appropriate to have regard to the opinion of the Advocate-General in Bouchereau, when he referred to 'deep public revulsion'. That is the kind of extreme case in which past conduct alone may suffice as constituting a present threat to the requirements of public policy.

...

84. ...Although the CJEU did not expressly refer to Bouchereau with approval in CS, nor it did in terms overrule it or depart from it. Further, there is no reason, in my view, to regard the two decisions as being necessarily inconsistent with each other. This is because, as I have said in my earlier analysis of Bouchereau, that case itself recognised that what one is looking for is a present threat to the requirements of public policy; but it also recognised that, in an extreme case, that threat might be evidenced by past conduct which has caused deep public revulsion.

85. However, with all of that said, I am also of the view that the sort of case that the ECJ had in mind in Bouchereau, when it referred to past conduct alone as potentially being sufficient, was not the present sort of case but one whose facts are very extreme. It is neither necessary nor helpful to attempt an exhaustive definition but the sort of case that the court was thinking of was where, for example, a person has committed grave offences of sexual abuse or violence against young children.

86. I would not wish to belittle the seriousness of the offence in the present case but it is not the sort of offence in which public revulsion at a past offence alone will be sufficient. I note that, in Straszewski, Moore-Bick LJ referred to 'the most heinous of crimes' at para.

17. That gives an indication of the sort of offence the ECJ had in mind when it said that a past offence alone might suffice. I also note that, in *ex p. Marchon*, the defendant was convicted of an offence of conspiracy to import 4½ kg of a Class A drug (heroin); he was a doctor; and he was sentenced to 11 years' imprisonment. As Moore-Bick LJ observed in commenting on that case in *Straszewski*, at para. 18, the offence had been described by this Court in *ex p. Marchon* as being 'especially horrifying' and 'repugnant to the public' because it had been committed by a doctor. In contrast, as the UT noted at para. 28 of its judgment in the present case, the sentence of 30 months' imprisonment that was imposed on this Respondent was at the lower end of the scale for offences of supplying Class A drugs".

11. The above excerpts from *Robinson* demonstrate that, first, the applicable sub-provisions of the EEA Regulations 2016 derive from Articles 27 and 28 of Directive 2004/38/EC ("the Directive"), which confirm *inter alia* that, under Article 27, measures can be taken to exclude European nationals on the basis of personal conduct on the grounds of public policy. Although it is stated that previous criminal convictions shall not in themselves constitute grounds for taking such measures, as confirmed at [84] to [85] of *Robinson*, the *Bouchereau* case recognised that "what one is looking for is a present threat to the requirements of public policy" which also recognised that "in an extreme case, that threat might be evidenced by past conduct which has caused deep public revulsion". As reflected at [85] of Lord Justice Singh's judgment, the ECJ had in mind in *Bouchereau* that where past conduct alone is considered to be potentially sufficient to demonstrate a present threat to the requirements of public policy, the facts would need to be "very extreme", and that, for example, this could include where a person has committed "grave offences of sexual abuse or violence against young children". It is with that in mind that the Secretary of State argues (as mentioned above) that the judge has not considered the "present threat" to the requirements of public policy which are evidenced by the "past conduct" of the Appellant alone by virtue of his conviction on 10th January 2012 for the murder of his mother and particularly his 6 year old brother.

Conclusion

12. In summary there is no error in the judge's assessment of the Appellant's deportation on the basis of whether he is a genuine, present and sufficiently serious threat on the basis of his present circumstances – as far as they go – and I preserve the judge's findings accordingly.

13. However, for all of the above reasons, I find that the judge has inadvertently omitted to consider whether the "present threat" to the requirements of public policy can be evidenced by the "past conduct" of the Appellant by virtue of his conviction on 10th January 2012 for the murder of his mother and particularly his 6 year old brother and whether this engages the Bouchereau exception on the specific facts of this appeal.

Next Steps

14. The remainder of the decision on this appeal, relating to the present threat to the requirements of public policy as evidenced by past conduct which the Secretary of State argues has caused deep public revulsion, will be re-made in the Upper Tribunal on a date that will be notified in due course.

15. In respect of that assessment I note that according to Articles 27 and 28 of the Directive mentioned above that the expulsion decision shall according to Article 27(2) "comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned" and therefore to assist the parties in preparation for the appeal they must prepare themselves to argue first in relation to whether or not the Secretary of State has established that there is a present threat to the requirements of public policy evidenced by past conduct which has caused deep public revulsion and if that basis for expulsion is established by the Secretary of State, the parties must also prepare themselves for argument in relation to whether or not that measure complies with the principle of proportionality pursuant to Article 27(2) of the Directive notwithstanding that a basis for expulsion on the grounds of public policy has already been established on the past conduct of the Appellant alone causing deep public revulsion, but also bearing in mind the preserved findings made by the judge.

Postscript

16. Following the hearing before me and the having drafted my decision, but before promulgation, the Court of Appeal's judgment in *Secretary of State for the Home Department v. Okafor* [2024] EWCA Civ 23 was handed down which upheld a decision of Upper Tribunal Judge Grubb and in doing so gave guidance on the proper approach to adjudicating deportation appeals where the Bouchereau exception is said to apply. I am fortified in my decision that the judge has erred in law in omitting consideration of the Bouchereau exception given that an analogous error of law was found by the Upper Tribunal in that appeal ("...the judge had failed to consider the so-called "Bouchereau exception" in concluding that the appellant did not represent a "genuine, present and sufficiently serious threat" to a fundamental interest in society based upon his conduct...") which then required the appeal to be remade at a further hearing, as is the case here.

Directions

17. I make the following directions for the continuation of this appeal:

- (a) The appeal is to be retained in the Upper Tribunal.
- (b) Given that the Appellant is unrepresented, and given that this appeal concerns a matter of some legal complexity, I direct that the parties prepare themselves to put forward legal argument as best as they may on the issues.
- (c) No later than three weeks before the date of resumed hearing, the Secretary of State shall file and serve any further materials he seeks to rely upon in relation to the remaining issues.
- (d) No later than two weeks before the date of resumed hearing, the Appellant shall file and serve any further materials he seeks to rely upon in relation to the remaining issues.
- (e) No interpreter is required.
- (f) The time estimate given is three hours.
- (g) No special directions have been requested.

(h) This matter can be listed before any Upper Tribunal Judge, or a Panel composed of an Upper Tribunal Judge sitting with a Deputy Judge of the Upper Tribunal.

(i) The appeal shall be listed for the first available date after 1st April 2024, to allow the parties time to prepare for the resumed appeal hearing and to allow the Appellant time to obtain legally aided representation, should he so wish to do so.

Notice of Decision

The decision of the First-tier Tribunal demonstrates a material omission and therefore error in law which requires the appeal to be further made in the Upper Tribunal on a date to be notified.

Deputy Upper Tribunal Judge Saini
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

2 February 2024

ANNEX 2: ADJOURNMENT DECISION AND DIRECTIONS NOTICE, 12 APRIL 2024

IN THE UPPER TRIBUNAL

Case No: UI-2023-003676

**IMMIGRATION AND ASYLUM
CHAMBER**

First-tier Tribunal No:
DA/00010/2022

THE IMMIGRATION ACTS

Decision and Directions Issued:

.....

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

DZHUNEYT TAMER SHEFKET

(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

ADJOURNMENT DECISION AND DIRECTIONS

1. This case was listed for a resumed hearing on 8 April 2024. Mr Shefket's case was going to be considered by two judges, following the decision by Deputy Upper Tribunal Judge Saini (issued on 7 February 2024) which concluded that the First-tier Tribunal Judge had made a legal mistake when making her decision (issued on 21 July 2023).

2. Mr Shefket is still not legally represented. I bear this in mind when seeking to explain what has happened and what will need to happen in the future.

The adjournment

3. Mr Shefket was unable to attend the hearing on 8 April. This was because of the ASLEF train strike affected his train service from the south coast into London. It was not appropriate to conduct the hearing remotely.
4. In these circumstances, the only proper course of action was to adjourn (put off) the hearing for another date.

The issues in this case

5. Judge Saini preserved (kept) a number of the First-tier Tribunal Judge's findings/conclusions: see paragraphs 9 and 12 of Judge Saini's decision and paragraphs 64-96 of the First-tier Tribunal Judge's decision. This means that:

(a) Mr Shefket has the lowest level of protection under the Immigration (European Economic Area) Regulations 2016;

(b) Subject to Issue 1 (see below), Mr Shefket does not represent a "genuine, present and sufficiently serious threat" to one or more of the fundamental interests of society.

6. The following points are important. The Upper Tribunal is of the view that the issues to be addressed in this case are now:

Issue 1: can the Respondent show that Mr Shefket's conviction for murder in Bulgaria in 2012 by itself (in other

words, leaving aside what the First-tier Tribunal Judge said in her decision in relation to any risk of re-offending), demonstrates that he represents a “genuine, present and sufficiently serious threat” to one or more of the fundamental interests of society? This issue will be described as the ‘Bouchereau exception issue’ (R v Pierre Bouchereau [1977] EUECJ R-30/77);

Issue 2: if the Respondent cannot show that the Bouchereau exception applies, then Mr Shefket should succeed in his appeal because of the preserved findings;

Issue 3: if the Respondent can show that the Bouchereau exception applies, the Upper Tribunal will then have to go on and assess whether the decision to deport Mr Shefket to Bulgaria is proportionate under EU law (that involves balancing up a number of different factors, for and against Mr Shefket);

Issue 4: if the Upper Tribunal decides that the decision is not proportionate, then Mr Shefket should succeed in his appeal;

Issue 5: if the Upper Tribunal decides that the decision is proportionate, Mr Shefket’s appeal will fail on EU law grounds;

Issue 6: the Upper Tribunal may also need to address human rights under Article 8 ECHR.

7. In order to appropriately assist Mr Shefket in understanding the Respondent’s case against him, I provide a brief summary of the Bouchereau exception:

Normally, in cases under the Regulations the risk of harm to society that a person might represent cannot be based only on the fact that they were convicted in the past. However, where the conviction was for a very serious offence, that conviction may be enough by itself to show that the person is a risk now.

8. The Respondent is reminded that the burden of establishing that the Bouchereau exception applies rests on him.
9. Mr Shefket and the Respondent will be able to provide further evidence. The parties must read the following directions very carefully and follow them.

Directions

- (1) If the Respondent wants to provide any new evidence, it must be sent to the Upper Tribunal and Mr Shefket **no later than 4pm on 29 April 2024**;
- (2) If Mr Shefket wants to provide any new evidence (for example, a letter from him explaining further details about what happened in Bulgaria and/or his current circumstances in the United Kingdom, and/or what his life might be like if he had to go back to Bulgaria now), he must send it in to the Upper Tribunal and to the Respondent **no later than 4pm on 13 May 2024**;
- (3) If Mr Shefket does want to send in any new evidence, it **must** be sent to the following email addresses:

(a) For the Upper Tribunal: [email]

(b) For the Respondent: [email]

- (4) If Mr Shefket or any witness needs to have a Bulgarian interpreter at the next hearing, he must tell the Upper Tribunal about this as soon as possible;
- (5) **No later than 10 days before** the next hearing, the Respondent must provide a clear skeleton argument (written submissions), addressing Issues 1-6 and setting out why he believes that the Bouchereau exception applies in this particular case, together with why he believes that the decision to deport is proportionate. In addition, the skeleton argument must state whether the Respondent accepts that Article 8 ECHR is a live issue in this case and, if it does, why deportation would be proportionate;
- (6) If either the Respondent or Mr Shefket would like these directions to be changed, they must contact the Upper Tribunal **as soon as possible** about this, setting out why they believe that the directions should be changed. They must mark any request for the urgent attention of Upper Tribunal Judge Norton-Taylor and they must copy any request to the other side as well.

H Norton-Taylor
Judge of the Upper Tribunal
Immigration and Asylum Chamber
Dated: 8 April 2024