



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

Case No: UI-2024-004441  
UI-2024-004442  
First tier number : HU/01046/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 20<sup>th</sup> of December 2024

**Before**

**UPPER TRIBUNAL JUDGE LANE**  
**DEPUTY UPPER TRIBUNAL JUDGE HILLS**

**Between**

KB  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Haywood, instructed by Wilsons Solicitors  
For the Respondent: Mr Terrell, Senior Presenting Officer

Heard at Field House on 9 December 2024

**DECISION AND REASONS**

1. The Appellant (KB) is male citizen of Portugal. The SSHD seeks to deport him on the basis of his conviction to 47 months imprisonment in 2020 for sexual offences against his step-daughter.
2. The Appellant appealed to the First Tier Tribunal (FTT) in two respects: (i) on human rights grounds against the Respondent's decision dated 16 June 2022 to make a deportation order against him on the grounds that his removal is conducive to the public good; and (ii) on May 2023 the Respondent refused his application for leave under Appendix EU on suitability grounds.

3. Given that the appeals were closely connected, they were heard together by the FTT and the judge dismissed them in a decision promulgated on 26 July 2024.
4. The Appellant appeals that decision to the Upper Tribunal and relies on five grounds, which are summarised at [2] of his written submissions, namely that the FTT judge materially erred in his decision, as follows:

The EUSS appeal

(a) He failed to determine whether KB constituted a 'genuine, present and sufficiently serious threat';

(b) He erred in his assessment of proportionality;

(c) He failed to make a finding on whether KB's deportation would interfere with his rehabilitation;

The human rights appeal

(d) He erred in determining that an 'exception' to deportation did not apply, and his findings are insufficiently reasoned;

(e) His finding that there were no 'compelling circumstances' is flawed in consequence of the other errors identified and insufficiently reasoned.

5. At the Upper Tribunal hearing, Mr Haywood focussed his oral submissions on the proportionality assessment in relation to Ground 2, so we will deal with that issue first. Adopting the approach in the Permission to Appeal dated 25 September 2024, we have considered Grounds 4 and 5 together with Ground 2. Grounds 1 and 3 then follow.

Ground 2 - Assessment of Proportionality; Ground 4 - An 'exception' to deportation based on KB's family life; Ground 5 - 'very compelling circumstances'

6. The Appellant challenges the FTT judge's assessment of proportionality. He argues that, central to that assessment, was the impact on the welfare and best interests of his son in the event he is deported.
7. The FTT judge set out his proportionality analysis from [65]. In relation to the impact of deportation on the Appellant's son, at [68(d)] the judge said:

The Appellant has a genuine and subsisting relationship with his son, who has expressed a clear wish for his father to remain in the UK. The son also has a number of special educational needs, including anger management issues, and the letter he provided in respect of these proceedings suggests that the Appellant's deportation would undoubtedly cause significant distress to him. In this regard I take into account the report of Beatrice Madzadzavara and the impact on the child when assessing his best interests.

8. The judge goes on to say at [69]:

I am satisfied that the factors relied upon by the Appellant do not outweigh the strong public interest in deportation in the particular circumstances of this case. While the Appellant's absence from the son's life will no doubt cause significant difficulties, these are not of the kind that cannot be overcome. It is clear that there is already an extensive level of support in place, and the Appellant's wife confirmed in oral evidence that he had "improved massively" in the last year. When asked what the impact of deportation would be, she explained that she would seek extra support, and said that she was sure that there would be a way for him to have help. The deportation might therefore be to cause difficulties but, while in no way wishing to undermine how challenging these may be, consideration has already been given to how these could be overcome. The child's best interests will continue to be served by remaining with his mother in the country he has spent his life in, with the support measures he has in place continuing.

9. The Appellant's written submissions pointed to particular aspects of the SEN evidence from 2019, the report of the independent social worker and the letter from the Appellant's son to highlight the impact of deportation. He argues that there is insufficient indication given the FTT judge's 'limited reference to the evidence,' that those matters were appropriately included in the proportionality assessment. Mr Haywood emphasised this point in his oral submissions, arguing that the FTT judge did not adequately assess the impact on the Appellant's son of his deportation and that 'significant distress' was not a proper characterisation when the evidence was taken into account.

10. The FTT judge noted at [20]:

I have taken account of everything I have heard and considered all the documentary evidence I have been referred to by the parties. I have carefully considered all the evidence in the round. I shall refer to the evidence and submissions so far as necessary to explain my findings and reasons.

11. The FTT judge had the SEN evidence, the report of the independent social worker and the letter from the Appellant's son before him and there is no indication he did not take those into account. Indeed, it is clear from his reasoning at [68(d)] and [69] that he considered the impact of deportation on the Appellant's son and wife, and concluded on balance that deportation was appropriate. We apply the principle set out in *Volpi* [2022] EWCA Civ 464 at [2]:

An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.

12. The Appellant makes four additional points at [22] of his written submissions in relation to the proportionality assessment, namely:

'Overcoming difficulties'

(b) The requisite test was not whether any 'difficulties' created by KB's deportation could be 'overcome', rather the focus should have been on the impact on KB's son and his welfare and best interests;

The presence of KB in his son's life

(c) When the Judge took in to account that KB's son's behaviour had 'improved massively', that was because KB had been released from custody and had regular direct contact with his son, so did not rationally go to impact of KB's deportation on his son;

Speculative findings: was there evidence to show that the 'difficulties could be overcome'?

(d) Similarly, that consideration (so this is tentative) had been given to providing KB's son with extra support at school did not demonstrate that extra support would be effective in dealing with his needs, so the judge in any event was not entitled to conclude that the difficulties created by KB's deportation could be 'overcome';

Additional impact of deportation not dealt with

(e) The Judge did not deal adequately with a further, important likely impact of KB's deportation.

KB's son was aware that his father had been in prison but he was not aware of the full detail of his offending, or who the victim of his father's offending was. The family were concerned that KB's deportation would likely lead to his son questioning why his father had been deported and, potentially, were he to discover the full detail of what had happened and the victim, that would have a huge impact on KB's son, and the family unit itself and, given the closeness of KB's son and KB's step-daughter, his step daughter herself.

13. Given our findings on the proportionality assessment, we are not persuaded that these points go any further in demonstrating an error of law on the part of the FTT judge. Although looked at through the lens of whether the difficulties could be overcome, the judge's assessment focussed on the impact on the Appellant's son and wife. As to whether deportation would lead to his son questioning the detail of what has happened, it is plain from the letter the Appellant's son sent to the FTT that he is already aware that deportation is at least possible.
14. In relation to Ground 4, the Appellant argues that the FTT judge's findings in relation to the 'family life exception' are materially flawed in consequence of the treatment of the EUSS appeal, because of inadequate reasoning and no adequate direction in law.
15. In relation to Ground 5, the Appellant argues that the FTT judge's assessment of 'very compelling circumstances' was flawed given the treatment of the EUSS appeal, insufficient reasoning, failure to consider all of the relevant facts, and the finding that the Appellant 'retained significant ties' in Portugal.

16. We have set out why we consider that the FTT judge's proportionality assessment was not flawed and adopt that reasoning again in relation to these grounds. We also restate the principle set out in *Volpi*. The FTT judge was entitled to rely on his earlier findings in relation to the proportionality assessment when considering the 'family life exception' and in concluding at [82] that deportation would not be unduly harsh on the Appellant's son or wife. Equally, the FTT judge relied on his earlier findings when he undertook the Article 8 balancing exercise at [85] and [86] in relation to 'very compelling circumstances.' It was reasonably open to him to conclude that, on balance, deportation was appropriate. While the judge deals with the human rights appeal in briefer terms than the EUSS appeal, when his decision is read in the round (including all of his earlier findings) it is clear he has approached the 'family life exception' and 'very compelling circumstances' appropriately.

*Ground 1 - Failure to determine whether KB was a 'genuine, present and sufficiently serious threat'*

17. The Appellant argued that the FTT judge did not address the considerations of Reg 27(5) of the Immigration (European Economic Area) Regulations 2016 (as preserved), with the consequence that his assessment of risk was materially flawed.

18. Mr Terrell for the Respondent argued at [9] of the Rule 24 Response:

There is nothing on a fair reading of the Judge's reasoning to suggest that he did not carefully consider the question of whether the Appellant posed a genuine, present and sufficiently serious risk. The analysis is highly detailed and the Judge considers, amongst other things, the nature and the extent of the conduct (§47), the risk of harm were the Appellant to offend again (§§48-49) and the risk of reoffending (§§50-58). Given those findings and the conclusion at §§60-61, it is entirely clear that the Judge is satisfied that the relevant test in regulation 27(5)(c) is met.

19. We prefer Mr Terrell's submissions. The FTT judge set out the correct legal framework to be applied. Although not explicitly set out in his decision, it is clear from the detailed nature of his assessment that the judge did, in effect, consider and find that the Appellant constituted a genuine, present and sufficiently serious threat.

*Ground 3 - Failure to engage with the prospect of KB's rehabilitation*

20. The Appellant argues that the FTT judge gave no consideration to whether the Appellant's deportation would interfere with his rehabilitation, which he says was a further material error in the assessment.

21. Evidence before the FTT in relation to the Appellant's rehabilitation was limited and the judge noted at [60] and [61]:

The Appellant's behaviour was a gross breach of trust and involved grooming and deception. It was persistent, including after the Appellant had been interviewed in respect of earlier allegations. I give significant weight to this past behaviour as indicative of an individual who has prioritised his own sexual gratification above all else, including the rights of children and his own parental responsibilities.

The evidence to suggest that he might have resiled from these attitudes is limited. The reports show limited engagement with rehabilitative options while in custody, with his time instead marked by remorse for his own circumstances and victim blaming. While the latest OASys report showed progress, the Appellant continued to maintain that the step-daughter was an equal participant who had initiated the contact. The evidence of rehabilitation before me is therefore little more than the Appellant's own assertion that he now recognises that what he did was wrong as well as his participation in a number of sessions of the Maps for Change toolkit.

22. While the FTT judge did not specifically address how the Appellant's deportation would interfere with his rehabilitation, it is difficult to see what meaningful conclusions he could have drawn given the limited evidence. We do not, in any event, consider that this would likely have made a difference to the FTT judge's decision given his comments on the seriousness of the Appellant's offences and ties to Portugal.

### **Notice of Decision**

This appeal is dismissed

**N Hills**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**Dated: 16 December 2024**