IAC-TH-CP-V2

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01142/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 24 February 2015	**On 25 March 2015**

Before

UPPER TRIBUNAL JUDGE PINKERTON

Between

JOSEPH MIRANDA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: In person – no representation
For the Respondent: Mr T Wilding

DECISION AND REASONS

1. The appellant is a citizen of Portugal. He was born on 10 December 1974 in Funchal, Madeira. The respondent made a decision to make a deportation order against him which is dated 13 June 2014. The relevant part of the decision reads as follows:-

> "On 11 December 2013 at Wood Green Crown Court, you were convicted of burglary with intent to steal – non dwelling. The Secretary of State has considered the offence of which you have been convicted and your conduct, in accordance with Regulation 21 of the Immigration (European Economic Area) Regulations 2006. She is satisfied

that you would pose a genuine, present and sufficiently serious threat to the interests of public policy if you were to be allowed to remain in the United Kingdom and that your deportation is justified under Regulation 21. She has therefore decided under Regulation 19(3)(b) that you should be removed and an order made in accordance with Regulation 24(3) requiring you to leave the United Kingdom and prohibiting you from re-entering while the order is in force. For the purpose of the order Section 3(5)(a) of the Immigration Act 1971 will apply.

The Secretary of State proposes to give directions for your removal to Portugal, the country of which you are a national."

2. The appellant appealed against this decision and the appeal was heard on 7 October 2014. The appeal came before First-tier Tribunal Judge Troup who allowed the appeal. The respondent sought to appeal that decision. Permission to appeal was granted and after an oral hearing before Upper Tribunal Judge Latter the First-tier Tribunal was found to have erred in law such that its decision was set aside. It was directed that the appeal would remain in the Upper Tribunal for the decision to be remade; hence the appeal came before me.

Documentation

3. I have before me all those documents that were before the First-tier Tribunal Judge. In addition the appellant provided some further evidence in an unnumbered bundle and with at least one document that appears to be in Portuguese which document was not translated.

The Oral Evidence Before Me

4. I heard evidence from the appellant; Ms Varsha Harilal Patelm - the appellant's partner - and from Mrs Maria Fatima Gonçalves Miranda – the appellant's mother. The appellant's father was in attendance at the hearing but in the end did not give evidence as he indicated that he was feeling unwell. The appellant and Ms Patel gave their evidence in English and Mrs Miranda gave evidence through an interpreter in Portuguese.

The Law

5. Under Regulation 19(3)(b) of the Immigration (European Economic Area) Regulations 2006 the Secretary of State may remove an EEA national or the family member of such a national if the Secretary of State has decided that the person's removal is justified on grounds of public policy, public security or public health in accordance with Regulation 21.

6. Regulation 21 states:-

"21. (1) In this regulation a 'relevant decision' means an EEA decision taken on the grounds of public policy, public security or public health.

(2) A relevant decision may not be taken to serve economic ends.

(3) A relevant decision may not be taken in respect of a person with a permanent right of residence under regulation 15 except on serious grounds of public policy or public security.

(4) A relevant decision may not be taken except on imperative grounds of public security in respect of an EEA national who—

(a) has resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision; or

(b) is under the age of 18, unless the relevant decision is necessary in his best interests, as provided for in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989.

(5) Where a relevant decision is taken on grounds of public policy or public security it shall, in addition to complying with the preceding paragraphs of this regulation, be taken in accordance with the following principles—

(a) the decision must comply with the principle of proportionality;

(b) the decision must be based exclusively on the personal conduct of the person concerned;

(c) the personal conduct of the person concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society;

(d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;

(e) a person's previous criminal convictions do not in themselves justify the decision.

(6) Before taking a relevant decision on the grounds of public policy or public security in relation to a person who is resident in the United Kingdom the decision maker must take account of considerations such as the age, state of health, family and economic situation of the person, the person's length of residence in the United Kingdom, the person's social and cultural integration into the United Kingdom and the extent of the person's links with his country of origin.

(7) …" (Not relevant to this appeal).

7. According to the respondent a letter was sent on 15 April 2014 requesting evidence from the appellant of his continuous residence and of exercising treaty rights in the UK but he failed to respond. Because he had provided no such evidence it was not accepted that he had acquired the right of permanent residence in the United Kingdom. According to a document at I3 of the respondent's bundle the appellant did not provide a response to that request because "Home Office already have all the paperwork that they are requesting him to send".

8. The evidence that I have before me which was not challenged by Mr Wilding at the hearing indicates that the appellant's father was purchasing National Insurance stamps at least from December 1973 when he was working at the Connaught Hotel. He has produced his card from that period to show this. Photocopy entries from

his passport at the time show that he was granted permission to work as a waiter at various establishments with entries from August 1973, January 1974 and October 1976. Thereafter he was granted the right to remain permanently in the United Kingdom by a letter dated 16 August 1979.

9. Prior to the appellant's father being granted the right to remain permanently in the United Kingdom the permission granted for employment as a waiter was "subject to review as necessary". It is a reasonable assumption that the appellant's father was employed throughout the period 1973 to 1979, otherwise I would not have expected him to have been granted permission to remain permanently.

10. The appellant's evidence is that he entered the United Kingdom in 1977 when he was aged 2. I have little reason to doubt that he has resided here ever since. There is a letter from the Home Office dated 5 April 1977 which refers to permission being granted to the appellant's mother to come to the United Kingdom to reside with the appellant's father. Permission was given also for three children to reside here, the appellant being one of them. There is good reason to suppose therefore that the appellant arrived during 1977 as he states. His father was exercising the equivalent of treaty rights at the time and the appellant thereafter, I accept, attended school until he was the age of 16.

11. In order for the appellant to acquire an initial five years permanent residence while at school he would have needed to be either self-sufficient with comprehensive sickness insurance or have been the family member of a person who was at the time exercising (the equivalent of) treaty rights in the UK. I agree with the respondent that simply attending school for five years would not be evidence of continuous residence in accordance with the EEA Regulations.

12. The problem for this appellant is the paucity of evidence that could lead me to the conclusion that he has acquired such a permanent right of residence and therefore enhanced protection against deportation. He came into the United Kingdom at a very young age and at a time when his father was working here with permission. However, no evidence has been produced to me in what way and for what periods his father was exercising treaty rights after he obtained indefinite leave to remain. One might assume that he carried on exercising such rights for the entire period until he retired. On the other hand it is perfectly possible – I do not know – that in fact he ceased any such activities immediately after he obtained indefinite leave to remain.

13. The appellant himself gave evidence of his employment after leaving school. There is a CV but this cannot by any means be said to be comprehensive because it lacks detail and evidence to support what is said in it. It was apparently prepared by Ms Patel and is in one respect at least incorrect in showing his employment record. In oral evidence before me the appellant said that he had not worked for HRPC (Parts Centre) from 2004 to 2011 as the CV stated but from 2007 (after his release from custody) until 2011. Even then it appears unlikely that that date is correct given that he was imprisoned for eighteen months on 21 August 2007 and on 6 November

2007 imprisoned for four months "concurrent". His next period of imprisonment then appears to have been on 24 December 2013. This is a period of more than five years since the last conviction but the evidence produced does not show to me on the balance of probabilities that between those two times he was residing in the UK in accordance with the Regulations.

14. I am perfectly satisfied that the appellant cannot bring himself within Regulation 21(4) of the 2006 Regulations which requires that a relevant decision can only be taken on imperative grounds of public security. To establish such enhanced protection the appellant would need to show that he is an EEA national who has resided in the UK for a continuous period of at least ten years prior to the relevant decision. In the judgment of the Court of Justice of the European Union in **Secretary of State for the Home Department v MG (C–400/12) [2014] 1 WLR 2441** the CJEU stated at paragraph 24 as follows:

> "24. It follows that, unlike the requisite period for acquiring a right of permanent residence, which begins when the person concerned commences lawful residence in the host member state, the ten year period of residence necessary for the grant of the enhanced protection provided for in Article 28(3)(a) of Directive 2004/38 must be calculated by counting back from the date of the decision ordering that person's expulsion."

15. In **MG** the CJEU went on to say at [33] and [36] that periods of imprisonment cannot be taken into account for the purposes of granting the enhanced protection provided for in article 28(3)(a) of Directive 2004/38 and that in principle such periods interrupt the continuity of a period of residence for that provision.

16. In principle periods of imprisonment interrupt the continuity of a period of residence for the purposes of Article 28(3)(a). Such periods may – together with other factors going to make up the entirety of relevant considerations in each individual case – be taken into account by the national authorities responsible for applying Article 28(3) as part of the overall assessment required for determining whether the integrating links previously forged with the host member state have been broken, and thus for determining whether the enhanced protection provided for in that provision will be granted.

17. As UTJ Latter stated at paragraph 13 of the error of law decision this apparent tension in the court's judgment was considered by the Upper Tribunal in **MG (Prison – Article 28(3)(a) of the Citizens Directive) [2014] UKUT 392** and it held that the judgment should be understood as meaning that a period of imprisonment during the relevant ten years did not necessarily prevent a person from qualifying for enhanced protection if that person was sufficiently integrated but a period of imprisonment must have a negative impact on the issue of establishing integration.

The Evidence Before Me

18. I do not find it necessary or appropriate to set out at length the appellant's evidence. I had no witness statement from him, Ms Patel (apart from an unsigned

document apparently produced to the First-tier tribunal) or the appellant's mother or father. I took the appellant through his evidence as recorded by the First-tier Tribunal Judge in his determination from paragraphs 17-25 inclusive. The appellant accepted that paragraphs 4 and 5 of the said determination which gave details of his family and his criminal record are correct.

19. As far as the appellant's criminal record is concerned the appellant accepts that he has 28 convictions for 53 offences which occurred between 1990 and 2013. He did not accept one conviction against him shown in the PNC record which was that against John Miranda which was for a term of 35 months imprisonment for being knowingly concerned in the fraudulent evasion of VAT. The appellant said that this conviction related to his brother. That assertion has not been challenged by the respondent and as a result I find that it does not relate to the appellant.

20. The most recent offences as shown in the First-tier decision are as follows:-

17	27.10.2003 – robbery	Three years imprisonment
18-23	Six offences between April 2005 and April 2007 for theft and deception when he was fined or imprisoned for short periods	
24	21.08.2007 – burglary and theft	Eighteen months imprisonment
25	06.11.2007 – false representations	Imprisonment four months concurrent
26	06.08.2013 – two offences of false representation	28 days imprisonment
27	10.09.2013 – shoplifting and other offences	28 days imprisonment
28	18.11.2013 – failing to surrender to custody	Seven days concurrent with the sentence below
29	11.12.2013 – burglary with intent	Sixteen months

21. Relevant matters upon which the appellant gave evidence are that his mother and father reside in London W12. His brother normally lives in Buckinghamshire with his wife and three children but he is now serving a prison sentence. The appellant's

sister lives in Ireland. The appellant left school at the age of 16. His partner Ms Patel has been with him since 2007. He was in immigration detention (following his release from prison) until late 2014 but was then granted bail. Ms Patel is now pregnant by him and is due to give birth in August 2015. He was working for Pers Removals between 2011 and 2013 and he started working for them again approximately two weeks before the hearing. He is only living with his parents currently because he is being electronically tagged at his parents' address. He had no sureties when he applied for bail. His partner was willing to be his surety but he went ahead without her anyway.

22. In relation to his employment he left school at 16 and went onto a YTS scheme for about a year and a half, learning to be a mechanic. He left due to an accident at work. After he recovered his health he was on unemployment benefit and then in and out of custody. He fell into bad company and only worked a couple of months "here and there". His first proper job was at "Lucas" working as a catering assistant. This was in 1995 and he worked for about eight to nine months there. In 1997 he worked for ANC Express Parcels. A friend then offered him a job in a travel agent and he worked there for about four months. He was then unemployed. He came out of custody and then went to an employment agency working "on and off".

23. The appellant says that he is now free of drug addiction. He has received no treatment for it but has been able to free himself from the habit since his term of imprisonment. His partner lives with her son. The appellant has a former partner and a daughter with her who comes to stay with him and Ms Patel at weekends and during school holidays. His daughter is not aware of the decision to deport him.

24. The appellant says also that he is in good health and has not left the UK since his arrival in 1977 except when he went to France before being convicted of evasion of import duty. He has no relatives in Portugal. His father has one brother and two sisters who all live in London. His mother has one sister who lives in London also. He speaks to his parents in Portuguese but he fears that he would struggle to speak the language in Portugal. Following his release from prison in 2006 he has lived continuously with Ms Patel until his arrest in 2013 and he has worked throughout that period. When he was in immigration detention at Campsfield Ms Patel visited him on five occasions in the previous three months. Ms Patel's son has resumed seeing his biological father and does so approximately once per week. In cross-examination before the First-tier Judge the appellant accepted that he had been given a chance by the respondent in 2006 when a decision was made to withdraw the deportation notice. He conceded that he had not "acknowledged" that opportunity. However, whilst serving his sentence he had not been subject to any adjudication and had not failed any drug tests. He has gained a computer technician's qualification.

25. In cross-examination the appellant asserted that it was correct in the NOMS report that he had not used drugs for six years from 2007. He just stopped using them. Before then he had been a regular drugs user and it was only when he had a row

with his brother that he spiralled back into drug use. When asked what confidence the Tribunal could have that he would not react in the same way again he promised that he would not. His partner has helped him to stay clean. He realises that because of his relapse he has affected her badly. He used to smoke drugs constantly and his then partner smoked with him but when she had the child she stopped doing so. All his friends prior to 2007 were bad company but he is now staying away from them and has erased their contact numbers from his phone. His brother received a ten year sentence for supplying thirteen kilos of cocaine. The appellant said that although he had a lapse in 2013 it has only made his resolve stronger and that he will not relapse again. It was put to him that his resolve has not yet been tested but he said that it had been because he is in a "trigger" area where his former associates still live and that is a test for him. He also accepted that all the jobs on his CV had been short-term jobs or jobs obtained through an agency.

Ms Patel's Evidence

26. Ms Patel said that she met the appellant after he was released from the prison sentence imposed in 2007. He was sharing a cell with her son's father. Ms Patel and the appellant moved in together after six months or so and had been living together since then. They have not lived together following his arrest for the most recent offence. She is now expecting on 20 August and it is the appellant's child. She had no evidence with her to confirm her pregnancy. I note, however, that in the appellant's bundle there is part of a document from North West London Hospitals NHS Trust referring to an investigation taken on 23 January 2015 which refers to maternity care; an antenatal provider, and the place of delivery which suggests to me that Ms Patel is indeed pregnant. Both she and the appellant are named respectively as "woman" and "partner."

27. Ms Patel went on to say that she was against drugs because of what her son's father did. He was quite aggressive towards her property and became a stalker. She is trying to become a driving instructor and works at a food outlet also. The appellant's daughter comes to stay with them and the appellant is behaving himself. He would go to work and come back with a wage every week. She thinks he got into trouble again because he hit a midlife crisis. She could not get a grip on him and noticed a deterioration in him. He stopped working so much in 2013 and she no longer had control over the money and he was "not into doing family stuff". When he went to jail he realised what he would lose by not taking his family seriously and he is now looking after them again. She wants him to return to her and to provide a life for his family.

28. In cross-examination Ms Patel said that she was not aware until he went to prison that the appellant had been shoplifting and had possessed a knife. Ms Patel confirmed that she visited the appellant in prison and immigration detention. Although there is reference in the NOMS report that she "now" has a conviction for carrying out frauds with the appellant she knows nothing about that. She does not have any criminal convictions.

29. Ms Patel was born in the United Kingdom and all her family are here. She gave other details of family members. She then said that the appellant's brother has a cash and carry in Enfield but she does not see much of him because he is really busy. She could not remember when she last saw him and the reason given was because she and he have both been busy. She last saw him in Christmas 2013 and she has spoken to him a few times. It was then put to her that in fact the appellant's brother is in prison and she accepted that she knew that. She added that she did not know for what reason he is in prison but when pressed about this she said that it was for drugs and he had received a ten year prison sentence. There was "no particular reason" she did not say that he was in prison.

30. Ms Patel did not accept that the appellant's risk of reoffending is high. She knows he is capable of good and bad. If the appellant had to go to Portugal they would not break up over it. They have spoken about it and would cross that bridge if it came to it. She was then questioned as to why she had said that she thought the appellant had got into trouble because of a "midlife crisis". She accepted that she thought he was scared of family life. Ms Patel was then asked if the appellant had given her the reason why he had got into trouble was because of an argument he had with his brother. Did she know anything about a row with him? Ms Patel responded that she did not tend to get involved.

The Appellant's Mother's Evidence

31. The evidence that I heard from the appellant's mother was given very tearfully. She displayed emotion throughout and added very little other than to plead that she did not want her son to return to Portugal because he has only ever known this country.

Findings

32. The appellant was straightforward in giving his evidence. Apart from the one conviction he accepted all the others. He accepted also that the jobs that he had had were generally of short duration or temporary jobs when he was working through an agency. Those periods of work had been interrupted by a number of periods of imprisonment.

33. The sentencing remarks which are set out at Appendix F of the respondent's bundle state as follows:-

> "On 16 October this year, you broke into a hospital; you took your toolkit with you. You broke your way in via a staff toilet; it is clear that some damage was caused and you were then found wandering around in the hospital waving a screwdriver trying to leave. Your presence in the hospital caused real problems. You admit that you were there looking for drugs but the staff who encountered you were very concerned about the wellbeing of patients but also their own wellbeing because you were brandishing the screwdriver in a very menacing way.

> You have 27 previous convictions for 53 offences, a whole range of offences, including dishonesty. I take into account that you do not accept one of those convictions; it makes no difference, but your record, Mr Miranda shows you to be a persistent and prolific offender. I do not ignore the fact that on the papers it would very much appear that there was a lengthy gap in your offending and I accept what your Counsel says that, during that gap, you led a perfectly respectable life but this break into the hospital was the culmination of offending that had been going on since the summer and it is of real concern to me that you have an outstanding sentence for shoplifting when you had on you a weapon, namely a knife.
>
> Your Counsel quite rightly concedes that, in terms of the guidelines, this is a category 1 offence. You targeted a hospital for the drugs, you brandished a screwdriver. This took place at night and staff were threatened by you. Set against that I accept, of course, in mitigation that very little damage, if any was caused and nothing was, in fact, taken.
>
> I have read the pre-sentence report. The pre-sentence report suggests that you have zero motivation for a drug rehabilitation requirement order, that you have very low insight into your problems. I accept that opinion can be contrasted by the opinion of Jenny Davis who says that you are ready, able and motivated to complete a drug programme. …"

34. The appellant was given full credit for his plea of guilty and then sentenced to a term of imprisonment of sixteen months.

35. I have not seen the opinion of Jenny Davis referred to in the sentencing remarks. Whether or not the appellant said that he was ready, able and motivated to complete a drug rehabilitation programme it seems that he did not do so. The NOMS report however does state at J7 that the appellant has attended drugs courses in prison previously including the 12-step RAPt course, has been drug free in prison, and has accepted help in prison also. The same NOMS report, however, concludes by stating that the appellant has a strikingly low ability to recognise problems, demonstrated by his unrealistic view that he can resolve his drug habit without professional intervention. The assessment of the likelihood of his reconviction is high with a medium level of risk of serious harm. It is said furthermore that as a drug abuser the appellant can be seen to be effectively self-medicating when emotional or relationship difficulties arise, as with the argument with his brother.

36. My assessment of the appellant therefore is that despite his stated wish and belief that he will remain hereafter free from criminal activity the reality is that, as referred to in the NOMS report, he will offend again. Past behaviour is very often an indicator of what behaviour will be displayed in the future and in this type of scenario I find that this is likely to be particularly so where the appellant has only sought and received limited help in addressing his problems.

37. I have considered what Ms Patel has said in her evidence and have taken it into account when arriving at my findings in relation to the appellant. She clearly did not tell the truth in relation to her knowledge of the appellant's brother's activities

and because of this I cannot trust that I have been told the truth on other matters either. I am prepared to accept that she did visit him in prison and when in immigration detention and for the reason already given she is likely to be pregnant with the appellant's child. I assess that she has limited ability to influence him positively to keep away from a life of crime.

38. As for the appellant's mother's evidence although she did her level best, I am sure, she could really add nothing to the appellant's case.

My Deliberations

39. I turn now to Regulation 21. For the reasons set out earlier in this decision the appellant cannot receive the benefit of enhanced protection against removal because the ten year period of residence necessary is calculated by counting back from the date of decision ordering the appellant's expulsion. The appellant's period of imprisonment interrupts the period of residence for the purpose of calculating the continuous period of at least ten years' residence in the UK. Had the appellant been able to take the benefit of that enhanced protection the decision could not have been taken except on "*imperative grounds of public security*".

40. Also for the reasons that I have given I am not able to find that there is sufficient evidence to show that the appellant has a permanent right of residence under Regulation 15. If he had proved that he had such a permanent right of residence then the decision to deport him could only be taken (in this appeal) on "*serious grounds of public policy*". Although it seems on the face of it somewhat unlikely that a person who came to the UK in 1977 who has remained here since has not obtained such a right, on the particular facts, and on the evidence that has been produced, I do not find that he is so entitled.

41. That of course is not the end of the matter because the other matters set out in Regulation 21 have to be taken into account before the removal of an EEA national who has entered the United Kingdom may be justified on the grounds of "*public policy, public security or public health*".

42. I am satisfied that the decision has not been taken to serve economic ends and that it is based exclusively on the personal conduct of the appellant himself. I bear in mind and apply the requirement that the decision must comply with the principle of proportionality and that his conduct must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society – in this case the threat to the interests of public policy; that matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision; and that the appellant's previous criminal convictions do not in themselves justify the decision.

43. In making my decision I take account of other matters referred to in Regulation 21(6). The appellant is now 40 years of age. He is in good health. His parents and siblings live in the United Kingdom. He has and has had a relationship with Ms Patel for a number of years. However, I treat her evidence with some caution. In

essence this is because she patently did not tell the truth about her knowledge of the appellant's brother's criminality and also when she referred to the appellant himself having a mid-life crisis as the reason for his offending when it was his drug problem that directly contributed to such offending. It cannot be a truthful description when the appellant himself said that he had had a row with his brother which triggered his drug taking and criminal behaviour thereafter. She would have known about this.

44. I accept that the appellant has some contact with his own daughter but he is not the primary carer for her and I have very little evidence about her and none from her mother or indeed her as to how she feels about the appellant. Likewise I have little reliable evidence that the appellant has a good relationship with Ms Patel's son and in particular that the son has bonded with the appellant "from day one and sees him as the father figure in his life and misses him dearly". It appears, in any event, that the child has contact now with his own father.

45. The appellant's parents came to the hearing and I assess that they are dismayed, bewildered and shocked at the appellant's behaviour and indeed the behaviour of the appellant's brother. I have little doubt that they would be badly affected if the appellant were to be deported.

46. Further matters to be taken into account are that I assess that the appellant has obtained some employment since his release on bail but in view of his previous history he is unlikely to be permanently employed either because it will be his choice not to be or of those employing him or because future offending would prevent him from having permanent employment as it has done in the past.

47. The appellant has resided in the UK for about 38 years. His links with his country of origin are, I accept, limited. He will remember nothing about the country. He speaks Portuguese with his parents and despite his protestations to the contrary I find that there is no good reason to suppose that he would be unable to communicate in Portuguese if he returned to Portugal or Madeira. Such skills as he has in particular in relation to driving should enable him to obtain employment there.

48. I have already found that the appellant stated and believes that he will hereafter remain free from criminal activity. I reject that for the reasons already given. Looking at the past he has been a "persistent and prolific offender"(as per the sentencing remarks) albeit that for the period following release after conviction in 2007 he seems to have remained out of trouble until 2013. However, he then offended again and received a further term of imprisonment. He was well aware that following his release from prison a deportation notice was served on him in 2006 but that after representations were made the deportation notice was withdrawn. Nevertheless a warning was given to him that may have had some positive effect upon him because he remained out of trouble for a few years. However, he then offended again. Such beneficial influence as Ms Patel may have had over him has proved to be only temporary.

49. I also consider whether the decision to deport could prejudice the prospects of rehabilitation from offending in Portugal. I understand that the appellant has not completed programmes that might reduce the risk of him reoffending in the future. He has decided to go "cold turkey" but on the facts as I find them to be he is not interested in rehabilitative work and there is no support network in the UK to help him rehabilitate. There seems to be no reason why he could not rehabilitate in Portugal if he decided that that was what he wanted to do. Therefore deportation would not prejudice the prospects of his rehabilitation.

50. Directive 2004/38/EC at recitals 23 and 24 state:

> "(23) Expulsion of union citizens and their family members on grounds of public policy or public security is a measure that can seriously harm persons who, having availed themselves of the rights and freedoms conferred on them by the EC treaty, have become genuinely integrated into the host member state. The scope for such measures should therefore be limited in accordance with the principle of proportionality to take account of the degree of integration of the person concerned, the length of their residence in the host member state, their age, state of health, family and economic situation and the links with their country of origin.
>
> (24) Accordingly, the greater the degree of integration of union citizens and their family members in the host member state, the greater the degree of protection against expulsion should be. Only in exceptional circumstances, where there are imperative grounds of public security, should an expulsion measure be taken against union citizens who have resided for many years in the territory of the host member state, in particular when they were born and have resided there throughout their life. In addition, such exceptional circumstances should also apply to an expulsion measure taken against minors, in order to protect their links with their family, in accordance with the United Nations Convention on the Rights of the Child, of 20 November 1989."

51. It is clear enough that there are not in this appeal imperative grounds of public security to be considered, however unpleasant it may be for members of British society to have to endure and suffer from the criminal activities of the appellant. One of the fundamental interests of society is to be able to live in peace, free of fear and the risk of suffering violence or from the criminal acts of others. Although the appellant was not born here he arrived when he was very young; he was schooled, brought up with his whole family, has worked, and has resided here throughout his life. He speaks English as his first language. To that extent therefore he has integrated into UK society. However, his crimes have been frequent. He was convicted of robbery and sentenced to three years in prison in 2003. He has been imprisoned frequently since but not for as long as for that robbery. For the latest offending he was imprisoned for sixteen months. He is a "persistent and prolific

offender". I take into account that he is at high risk of offending again and that there is a medium risk of harm to other members of the public should he do so.

52. Applying the principle of proportionality and taking into account all the considerations in Regulation 21(6) and with such guidance as I find I am given in the recitals 23 and 24 above I conclude that the appellant succeeds in this appeal. He has been here a very long time -- almost all of his 40 year life. Although he is not fully integrated into the UK -- his offending is evidence of this and there is a very real concern about future offending -- he has integrated to an extent because he was schooled and brought up with his family here, he has worked and has resided here throughout his life and speaks English as his first language. He has a long standing relationship with Ms Patel. He has a daughter here with whom he has a relationship and the possibility of another child being born in August 2015. These matters outweigh the negative considerations to which I have referred. As a result I find that it would be disproportionate to remove him from the United Kingdom. However, if the appellant continues to offend and carry out criminal acts for which he receives punishment through the courts a future decision to remove him may well be upheld. As it is currently the appellant succeeds in his appeal.

Notice of Decision

I allow the appeal under the Immigration (EEA) Regulations 2006.

No anonymity direction has been made thus far and none has been sought. In the circumstances of this appeal I see no need for one.

Signed Date **25 March 2015**

Upper Tribunal Judge Pinkerton