Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00724/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 30 November 2015	**On 1 February 2016**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A C
[ANONYMITY ORDER MADE]

Respondent

Representation
For the appellant: Mr N Bramble, a Senior Home Office Presenting Officer
For the respondent: Mr M Moriarty, counsel instructed by Luqmani Thompson Solicitors

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal allowing the claimant's appeal against her decision to remove him to Italy, his country of origin. The Secretary of State's decision to remove him was made pursuant to Regulation 21 of the Immigration (European Economic Area) Regulations 2006 (as amended).

2. This appeal has been heard in the First-tier Tribunal on two occasions, on 25 November 2014 before First-tier Tribunal Judge Widdup and Dr C Winstanley, a Non-Legal Member. That decision was set aside because the panel erroneously applied the highest level of protection pursuant Regulation 21(4).

3. The appeal was heard again on 12 June 2015 before First-tier Tribunal Judge Grant and Mrs S Hewitt JP, a Non-Legal Member. The Secretary of State's challenge is that the First-tier Tribunal's reasons are inadequate. Permission to appeal was granted on that basis.

Error of law decision

4. There is a material error of law in the First-tier Tribunal's decision in that its reasoning is inadequate, as Mr Moriarty for the claimant conceded at the hearing. The question of whether the claimant is entitled to the imperative grounds level of protection in Regulation 21(4) remains in issue.

5. By consent, the First-tier Tribunal decision will be set aside. The decision will be remade, in the light of any written submissions received from the parties within 7 days of the error of law hearing, with particular reference to the issue of the appropriate level of protection and the additional material submitted by the appellant in Bundle B.

6. It is not considered that any evidence from the claimant is required in order for the decision in this appeal to be properly determined. Neither party has applied for a further oral hearing. I consider that having regard to the submissions received, and to the overriding objective, the decision can justly be remade on the documents before me without a further oral hearing.

7. I now proceed to remake the decision in this appeal on that basis.

Legal framework

8. The appeal falls to be decided under Regulation 21 of the Immigration (European Economic Area) Regulations 2006 (as amended):

> **"Decisions taken on public policy, public security and public health grounds**
>
> **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; …
>
> (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. …"

9. That provision implements the provisions of Article 28(3) of Directive 2004/38/EC. The Upper Tribunal in 2012 referred to the Court of Justice of the European Union two cases for preliminary rulings concerning the proper interpretation of Article 28(3)(a) for in relation to imprisonment in the host state, in *Onuekwere* (imprisonment – residence) Nigeria [2012] UKUT 269 (IAC) and in *MG* (EU deportation - Article 28(3) - imprisonment) Portugal [2012] UKUT 268 (IAC).

10. In *Onuekwere* (Judgment of the Court) [2014] EUECJ C-378/12, the Court of Justice held that:

> "1. Article 16(2) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 … must be interpreted as meaning that the periods of imprisonment in the host Member State of a third-country national, who is a family member of a Union citizen who has acquired the right of permanent residence in that Member State during those periods, cannot be taken into consideration in the context of the acquisition by that national of the right of permanent residence for the purposes of that provision.

> 2. Article 16(2) and (3) of Directive 2004/38 must be interpreted as meaning that the continuity of residence is interrupted by periods of imprisonment in the host Member State of a third-country national who is a family member of a Union citizen who has acquired the right of permanent residence in that Member State during those periods."

11. In *MG*'s case, the Court of Justice held that:

> "1. On a proper construction of Article 28(3)(a) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 …the 10-year period of residence referred to in that provision must, in principle, be continuous and must be calculated by counting back from the date of the decision ordering the expulsion of the person concerned.
>
> 2. Article 28(3)(a) of Directive 2004/38 must be interpreted as meaning that a period of imprisonment is, in principle, capable both of interrupting the continuity of the period of residence for the purposes of that provision and of affecting the decision regarding the grant of the enhanced protection provided for thereunder, even where the person concerned resided in the host Member State for the 10 years prior to imprisonment. However, the fact that that person resided in the host Member State for the 10 years prior to imprisonment may be taken into consideration as part of the overall assessment required in order to determine whether the integrating links previously forged with the host Member State have been broken."

12. In the light of that decision, the Upper Tribunal in *MG* (prison-Article 28(3) (a) of Citizens Directive) [2014] UKUT 392 (IAC) held as follows:

> "(1) Article 28(3)(a) of Directive 2004/38/EC contains the requirement that for those who have resided in the host member state for the previous 10 years, an expulsion decision made against them must be based upon imperative grounds of public security.
>
> (2) There is a tension in the judgment of the Court of Justice of the European Communities in Case C-400/12 Secretary of State v MG, [2014] EUECJ C-400/12, in respect of the meaning of the "enhanced protection" provision.
>
> (3) The judgment should be understood as meaning that a period of imprisonment during those 10 years does not necessarily prevent a person from qualifying for enhanced protection if that person is sufficiently integrated. However, according to the same judgment, a period of imprisonment must have a negative impact in so far as establishing integration is concerned."

13. The Upper Tribunal has drawn together the various authorities on rehabilitation in *MC* (Essa principles recast) [2015] UKUT 520 (IAC), as follows:

> "1. Essa rehabilitation principles are specific to decisions taken on public policy, public security and public health grounds under regulation 21 of the 2006 EEA Regulations.
>
> 2. It is only if the personal conduct of the person concerned is found to represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society (regulation 21(5)(c)) that it becomes relevant to

consider whether the decision is proportionate taking into account all the considerations identified in regulation 21(5)-(6).

3. There is no specific reference in the expulsion provisions of either Directive 2004/38/EC or the 2006 EEA Regulations to rehabilitation, but it has been seen by the Court of Justice as an aspect of integration, which is one of the factors referred to in Article 28(1) and regulation 21(6) (Essa (2013) at [23]).

4. Rehabilitation is not an issue to be addressed in every EEA deportation or removal decision taken under regulation 21; it will not be relevant, for example, if rehabilitation has already been completed (Essa (2013) at [32]-[33]).

5. Reference to prospects of rehabilitation concerns reasonable prospects of a person ceasing to commit crime (Essa (2013) at [35]), not the mere possibility of rehabilitation. Mere capability of rehabilitation is not to be equated with reasonable prospect of rehabilitation.

6. Where relevant (see (4) above) such prospects are a factor to be taken into account in the proportionality assessment required by regulation 21(5) and (6) (Dumliauskas [41]).

7. Such prospects are to be taken into account even if not raised by the offender (Dumliauskas [52]).

8. Gauging such prospects requires assessing the relative prospects of rehabilitation in the host Member State as compared with those in the Member State of origin, but, in the absence of evidence, it is not to be assumed that prospects are materially different in that other Member State (Dumliauskas [46], [52]-[53] and [59]).

9. Matters that are relevant when examining the prospects of the rehabilitation of offenders include family ties and responsibilities, accommodation, education, training, employment, active membership of a community and the like (Essa (2013) at [34]). However, lack of access to a Probation Officer or equivalent in the other Member State should not, in general, preclude deportation (Dumliauskas [55])

10. In the absence of integration and a right of permanent residence, the future prospects of integration cannot be a weighty factor (Dumliauskas [44] and [54]). Even when such prospects have significant weight they are not a trump card, as what the Directive and the 2006 EEA Regulations require is a wide-ranging holistic assessment. Both recognise that the more serious the risk of reoffending, and the offences that a person may commit, the greater the right to interfere with the right of residence (Dumliauskas at [46] and [54]).”

14. That then is the basis on which I approach this appeal.

Factual matrix: the claimant’s history

15. The claimant was born in Milan in 1963. He had a twin brother and two other brothers, as well as a sister. He left school in 1977, age 14, and went into hairdressing. In 1981, he opened his own salon. In 1985, his twin brother died of complications from an operation on his heart. His mother rejected the claimant, because he reminded her too much of his dead twin. The claimant began taking drugs every day; heroin, crack cocaine, cannabis, and any other drug he could obtain.

He lost interest in his hairdressing salon: his sister tried to manage it but was less successful.

16. The claimant visited London for a few months in 1989, taking odd jobs to survive, but also shoplifting. He was convicted of shoplifting and theft on 3 occasions that year, served 2 weeks of a 4-week sentence, and returned to Italy, where he entered a drug rehabilitation programme in Milan.

17. In 1991 or 1992, the claimant returned to London with his partner, another Italian citizen whom he had met on the drug rehabilitation programme; she has continued to use drugs with him over the years, and has longstanding mental health problems. The claimant signed on at the job centre, and asked around for work. He did not speak English so he sought work in the Italian community. He did whatever came along and they found a home together in Lambeth.

18. In about 1995, the claimant became ill and was diagnosed HIV-positive. He has been looked after by the South London and Maudsley NHS Trust since then, now for 20 years. His older brother came to London and also became ill about the same time. The claimant looked after his brother and his partner.

19. The claimant was still using drugs and in September 1995 he was cautioned for possession of a controlled drug (heroin). He cared for his brother until his brother died in 1996.

20. The claimant and his partner continued to use drugs together. In October 2002, after importing a quantity of controlled drugs from Jamaica to the United Kingdom, he was sentenced to 2 years imprisonment. The claimant served about 9 months then was released on home detention curfew.

21. In January 2008, the claimant was convicted at Camberwell Green Magistrates' Court of possession of a controlled drug (heroin), and fined.

22. In 2009, the claimant and his partner had a crisis and lost their home in Lambeth because they had been allowing other people to use drugs there. His partner was sectioned and hospitalised with mental health problems: she was paranoid and hearing voices. Their relationship ended, although their friendship continues.

23. After a month in hospital, the claimant's ex-partner was provided with hostel accommodation. The claimant was homeless, moving between hostels, visiting his ex-partner and trying to look after her. The claimant and his ex-partner saw each other every day. The claimant stopped taking his antiretroviral medication; he thought a break would be all right as he had been taking it so long, but he continued to use heroin and crack cocaine.

24. In January 2009, the claimant was convicted at Camberwell Green Magistrates' Court of possession of heroin and cocaine, and sentenced to a community order and drug rehabilitation for 6 months. In March 2009, he was again convicted of possession of cocaine and heroin, fined and sentenced to 1 day's imprisonment.

25. In May 2012, the claimant was convicted at South West London Magistrates Court of possession of heroin, and again fined. In April 2013, the claimant was given a community order and a curfew after conviction at South London Magistrates Court for destroying or damaging property with a value of £5000 or less.

26. The claimant claims to have very little memory of events in 2013. On 18 October 2013, he was convicted at Kingston upon Thames Crown Court of having an offensive weapon in a public place and destroying property valued at £5000 or less. He had been asked to leave a restaurant, waved a bread knife at the chef, threw the knife on the floor and then walked out, smashing one of the tables en route before crossing the road to order a takeaway. He was sentenced to 4 months' imprisonment and remained in immigration detention thereafter. The claimant did not appeal that conviction. On 8 November 2013, the claimant was sent a liability to deportation letter, but he did not respond.

27. During his imprisonment, records show that the claimant spent some time in the prison healthcare wing and was briefly transferred to hospital for diagnosis of an HIV/AIDS related illness. His behaviour in prison from September 2013 became increasingly odd: by December 2013, he was constantly banging on his cell door. His demeanour was odd, but he denied having hallucinations. By early January 2014, his hygiene was poor and he was agitated and odd in his behaviour. The furniture in his cell was damaged, the shelves were broken, and the floor of his cell was strewn with teabags, eating utensils and general rubbish. By late January, the prison officers were beginning to suspect that the claimant had dementia: he had fluctuating levels of cognition and alertness, was not oriented as to time and place, appeared confused and disorientated, was moving around the cell and often yelling, incomprehensibly and mostly in Italian. Hospitalisation was recommended, but there were concerns as to whether the claimant had the capacity to consent to hospital treatment.

28. A CT brain scan on 29 January 2014 showed an old small stroke but no acute intracranial pathology. By mid-February, he had deteriorated further, shouting incoherently in his cell, throwing a cup of hot water through a hatch at a member of staff, unpredictable in mood and constantly seeking food and hot water. By late February, he was demanding food and sex and making references to stains on his trousers and underpants being caused by masturbation.

29. In February 2014, the claimant was diagnosed with HIV-related dementia, chronic pancreatitis, and Hepatitis C. His behaviour and comprehension began to improve towards the end of February and in early March 2014, by which time he had been back on anti-retroviral treatment for about 2 months. In early 2014, the claimant described himself as having 'woken up' in prison with no memory of the events which had resulted in his conviction and imprisonment. The claimant's physician, Dr Lau considered that his aggressive and erratic behaviour might have been largely due to his having been ill with HIV encephalopathy, an infection of the brain as a result of HIV infection, which appeared to have resolved on anti-retroviral therapy.

30. It seems, however, that the claimant's memory was permanently affected even after he his behaviour improved. In September 2014, the claimant was noted to have no long term memory and to be unable to explain past events. On 13 November 2014, his consultant physician, Dr Sean Waldron, stated that the event which led to his conviction was probably temporally associated with his advanced HIV encephalopathy, which could recur if he did not keep up his anti-retroviral therapy. He did not give as his opinion that the event was *caused* by the HIV encephalopathy, but that it occurred at the same time ('temporally associated').

31. The claimant served his sentence and was then moved to immigration detention, from which he was released at the end of March 2015. He signs on weekly with the immigration authorities in Croydon but finds it stressful as it is a considerable distance away and he 'does not know the area well'.

32. In the United Kingdom, the claimant has no friends and has not been in any relationship since he broke up with his Italian ex-partner in 2009; they remain close as friends, and he sees her about 4 times a week. The claimant has been away from Italy for over 20 years. He remains estranged from his mother and has little contact with his surviving sister and brother. He does not know how he would get his HIV medication in Italy.

33. On 16 June 2015, following a meeting with the claimant on 1 June 2015 at the Helen Bamber Foundation, Professor Cornelius Katona gave as his opinion that:

> **"[The claimant's] risk of reoffending**
>
> 10.1 [The claimant's] past offences (with the exception of his 2013 offence) were all related to his drug use. His 2013 offence was in my view related to his progressive HIV-related brain disease.
>
> 10.2 [The claimant] is in my view at low risk of reoffending if he continues to abstain from illicit drug use and if his HIV infection remains treated and monitored closely and if he continues to benefit from the close support of [his ex-partner] who sees him several times a week, speaks to him daily by telephone and ensures that he attends appointments (as was evident by her having accompanied him to his appointment with me).
>
> 10.3 If [the claimant] resumes his use of illicit drugs he would then become at high risk of committing further drug possession offences.
>
> 10.4 [The claimant appears to have been compliant with his medication since March 2014 (i.e. for more than a year). If his HIV treatment is disrupted for any reason then he would become at increasing risk of developing a recurrence of his HIV-related acute confusional state and associated erratic behaviour. This would significantly increase his risk of further impulsive and aggressive behaviour 'driven' by his confusion.
>
> 11. **What effects on [the claimant] might deportation to Italy have had in 2014 and what effects might such deportation have now or in the future?**
>
> 11.1 [The claimant] is currently being monitored by an HIV team here in the United Kingdom. He was unable to give me details of his current treatment and I am concerned that without close monitoring he would be very likely to interrupt his treatment. The risk of mental (and physical) worsening would be particularly high if

> he became unable to access his antiretroviral treatment or found it so difficult to do so that he chose to take another ill-advised 'break' from his treatment. His mild persisting cognitive impairment increases the risk that he might do so without fully understanding the potential risks and consequences.
>
> 11.2 If [the claimant] were deported to Italy he would experience the loss of support he currently receives from [his ex-partner] and from his medical team in Lambeth. He would feel increasingly stressed – which would result in increasing temptation to resume illicit drug use. If he experienced difficulties (even temporary ones) in accessing his HIV treatment, there is a very significant risk that he would discontinue his treatment.
>
> 11.3 I therefore share Dr Waldron's concern that …under such circumstances [the claimant] would …'be at high risk for regressing to the very poor state of health in which he presented to St George's Hospital from Wandsworth HMP. This could easily reactivate the apparent retroviral encephalopathy that seems likely to have been strongly associated with his difficult behaviour in the past'."

34. Towards the end of June 2015, not long after that report was written and less than a month after meeting Professor Katona at the Helen Bamber Foundation, the claimant got into an altercation with the Immigration Officer when signing on, began swearing at him, and was sent away without signing. He signed without incident the following week.

35. At the hearing on 30 November 2015, Mr Moriarty disclosed a further drugs offence. The claimant had been arrested on 28 November 2015, with some friends, in possession of a 'spliff' (a cannabis cigarette). He had been charged and was due to appear at Camberwell Green Magistrates Court on 15 December 2015.

Submissions

36. For the Secretary of State, Mr Bramble relied on the decision of the Court of Justice of the European Union in *MG* and in *Onuekwere.* He argued that the effect, taken together, of those decisions is that continuity of residence is broken by any period of imprisonment but that where the 10 years continuous residence could be established prior to the prison sentence beginning, it is not automatically lost by the fact that the EEA national spends time in prison thereafter, but that the time spent in prison must be taken into account in determining, along with all relevant factors, the proportionality of the decision to deport. He relied on paragraph 18 of the preamble to Directive 2004/38/EC and argued that the residence in question must be lawful and 'in accordance with the Regulations' throughout.

37. In this appeal, Mr Bramble observed that although the appellant had been physically present for a number of years in the United Kingdom, there was insufficient evidence that he had ever been a person exercising Treaty rights and thus advancing towards permanent residence or any higher level of protection from removal. The claimant could not show 10 years' continuous residence before the decision to deport him was made, nor could he show permanent residence and a period of 10 years in accordance with the Regulations, at any earlier time. He was not, therefore, to be

regarded as entitled to the enhanced protection afforded by the imperative grounds provision in Regulation 21(4).

38. Mr Bramble relied upon the Upper Tribunal's decision on the question of rehabilitation in *Essa* (EEA: rehabilitation/integration) [2013] UKUT 00316 (IAC), which had been considered and interpreted by the Court of Appeal in *Secretary of State for the Home Department v Dumliauskas & Ors* [2015] EWCA Civ 145. The appellant had at best only shown limited future prospects of integration, which could not be a weighty factor in this appeal. Such prospects were never a trump card: the Directive and the Regulations required a wide-ranging, holistic response. The more serious the risk of reoffending, and the more serious the offences which might be committed, the greater the right to interfere with the right of residence.

Claimant's submissions

39. The claimant's solicitors, Luqmani Thompson, on 4 December 2015 submitted that the claimant should be treated as having the highest 'imperative grounds' protection, relying on the decision in *MG's* case. They also relied on the decision of the Upper Tribunal in *MG (*prison – Article 28(3)(a) of Citizens Directive) [2014] UKUT 392 (IAC) and argued that in the light of the appellant's medical circumstances, the integrating links should not be found to have been broken in this appeal. They contended that the claimant had not been shown to present the high level of risk which the 'imperative grounds' test required.

40. In relation to Regulations 21(5) and 21(6), Luqmani Thompson sought to rely on the 2014 First-tier Tribunal decision, which was overturned and is no longer relevant to the assessment of the claimant's appeal. That part of the claimant's submissions is of no assistance in remaking the decision now.

41. The claimant argued that there were strong reasons for concluding that he does not represent a 'genuine, present and sufficiently serious threat' to the public interest; that it was probable that the commission of the offence arose from his abnormal state of mind; that the offence was impulsive; that the claimant was now in remission and that there was no previous pattern of violent offending. The claimant had been imprisoned only twice, in 2002 and 2012.

42. The Secretary of State's refusal letter was inaccurate in that it stated that the claimant was believed to be in good health; in fact, he had well-documented medical issues and complex healthcare needs, which would be likely to be interrupted in Italy, at least for a time. His Italian ex-partner had been his *de facto* carer for over 20 years. The claimant was fully integrated into the United Kingdom and had very little to which to return in Italy. His removal to Italy would be disproportionate given his drug problems, health, and background.

43. If the Upper Tribunal did not consider that the claimant was fully rehabilitated, he would rely on *Essa* (EEA: rehabilitation/integration) [2013] UKUT 00316 (IAC) at paragraphs [33]-[36] and on paragraphs [27] and [36] of the Upper Tribunal's decision in *MG.*

44. The claimant invited the Upper Tribunal to restore the 2014 First-tier Tribunal decision, or to remake the second First-tier Tribunal decision, confirming that the claimant could not be deported under Regulation 21(4) and/or Regulation 21(5).

Discussion

45. It will always be a question of fact for the decision maker whether the applicant has spent 10 years *continuously* in the United Kingdom. In this appeal, the claimant cannot show 10 years of continuous residence before the decision to deport him was taken. He was in prison from September 2013, when he was arrested for the index offence to March 2015. The decision to deport him was served upon the claimant on 11 November 2013. Nor is there satisfactory evidence of *continuous* residence here during all of that period, and the claimant himself cannot assist, because he has no memory of past events. Applying *MG,* save for the reservation about earlier integration, the claimant is not entitled to the enhanced 'imperative grounds' protection in Regulation 21(4).

46. The next task is to consider whether the claimant had acquired a right of permanent residence at any time prior to his imprisonment. In order to do so, he would need to be resident in the United Kingdom 'in accordance with the Regulations'. The evidence in this appeal does not reach that standard because the claimant did not produce evidence of working, nor of his claimed registration at a job centre in 1991 or 1992. There are no tax and National Insurance records or bills to support continuity of residence. In 2002, he was imprisoned for 9 months and thereafter it is not suggested in his evidence that he worked. The claimant has not satisfied me, on the evidence before me, that he acquired a right of permanent residence under Regulation 15 at any time while he was in the United Kingdom.

47. The claimant is entitled, therefore, only to the basic protection provided by Regulations 21(1), 21(2), 21(5) and 21(6) of the EEA Regulations. In considering his appeal, I remind myself that the decision must comply with the principle of proportionality, that it must be based exclusively on his personal conduct, that such conduct must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society (in this case, public safety); that matters isolated from the particulars of the case, or considerations of general prevention do not justify a decision to remove him; and that his previous convictions are not sufficient 'in themselves' to justify removal.

48. The claimant is a drug user of more than 20 years' standing, along with his ex-partner. He has twice been given the opportunity to cease using drugs in a drug rehabilitation programme, once in Italy and once in the United Kingdom. He has been unable or unwilling to do so, and he has failed to cooperate with treatment for his HIV/AIDS for a lengthy period from 2009-2014 when the drugs regime was recommenced while he was in prison.

49. In the past, he imported drugs into the United Kingdom on at least one occasion, and he was found guilty of a violent offence involving a knife, and threats. He has a long history of drug-related criminal offending, and his impulsive behaviour, which his

doctor described as aggressive, has not ceased: as recently as June 2015, he behaved in such a way when signing on before an Immigration Officer at Croydon that he was told to leave and come back the following week.

50. His criminal behaviour has also resumed: just a few days before the Tribunal hearing, the claimant was again arrested for possession of cannabis, which is a criminal offence. He has therefore returned both to drug taking and to crime.

51. The medical evidence is clear: now that the claimant has returned to drug use, he is likely to stop taking his HIV/AIDS medication, if indeed he has not already done so, and to become ill and unstable again, which on the last occasion led him to violence and on other occasions has led him to theft and to aggressive language and behaviour. The claimant's HIV encephalopathy and other AIDS-defining ailments are attributed to his long drug abuse and poor self-care in the United Kingdom. The evidence of Dr Waldron was that if the claimant returned to drug taking, or ceased taking his medication, his HIV encephalopathy and the confusion of mind it entailed was likely to recur.

52. Professor Katona's opinion was that with the close support of his ex-partner, and medical treatment and monitoring, the claimant was at low risk of reoffending, but that if he resumed using illicit drugs, he would be at high risk of committing further drug possession offences. I recall that despite the strength of the bond between them, both the claimant and his ex-partner are long-term drug users and that she herself has had mental problems, including paranoia, arising out of her own drug use. It is not clear that her support of him is enough to keep him away from drugs, and certainly in the past that has not been the case.

53. In reaching my decision, I am required to take into account the claimant's age, state of health, family and economic situation, his social and cultural integration into the United Kingdom, and the extent of his links with his country of origin, Italy. The claimant's health is poor, due to his extended drug use, but for at least one long period, he was unable or unwilling to use the support available in the United Kingdom. The claimant relies on his connection with the South London and Maudsley NHS Trust, dating back to 1995, but it appears that he lost touch with them and ceased taking his anti-retroviral medication in 2009 or 2010, and that this was not picked up until he was ill in prison in early 2014. They were able to support him while he was in prison, but he was released in March 2015, and by June 2015 he was abusive to an Immigration Officer, shouting and swearing, and by late November 2015, he had returned to crime and was arrested in possession of cannabis. It is unclear whether the claimant has disengaged again from the support provided by the Trust, or whether his impulse towards drug-taking is so strong that the support cannot prevent it.

54. Professor Katona's concerns have been borne out by the claimant's return to drug taking and thus to crime, by possession of the drugs for which he was arrested, which occurred only a few months after Professor Katona prepared his report. There is no evidence before me to indicate whether the claimant continues to take his

medication in these changed circumstances. There is an unsourced assertion in Professor Katona's report, that he has doubts as to the availability of HIV/AIDS treatment in Italy. However, as set out at (8) in the Upper Tribunal's decision in *MC,* that is not evidence of sufficient strength to require me to presume that no appropriate treatment will be available for the claimant in Italy. I note, in particular, that the claimant did access drug rehabilitation treatment in Milan in 1992, where he met his ex-partner.

55. The claimant's integration into the United Kingdom is not strong. He has no friends here: he does not work or study and his only friendship is with his ex-partner, whose own status is unclear and who is also an Italian citizen. The claimant has a very long history of criminal offences, all connected to his apparent inability to stop using heroin, cocaine, and crack cocaine. A drug rehabilitation programme in Milan in the early 1990s was ineffective, except that he met his ex-partner there, and she has been part of his life ever since. Another requirement to undertake a drug rehabilitation programme, imposed in January 2009 by Camberwell Green Magistrates Court, was ineffective because the claimant was re-convicted of drugs offences 2 months later.

56. The claimant seems to be a loner: in neither Italy nor the United Kingdom has he friends or family relationships, save his relationship with his ex-partner, who also has a history of drug use. The claimant's evidence is that he has spent a long time outside Italy, where he has a brother and sister with whom his links are not close, and a mother from whom he is estranged, and has lost his links to his country of origin. However, the claimant is still only 52 and lived more than half his life in Italy, where he was educated and grew up. He still has family there, and as he went to school in Italy, there are likely to be other people he knows, who have not been mentioned in evidence in these proceedings. A drug rehabilitation programme was available in Italy and there is no reliable evidence before me to suggest that he could not receive such support as he would need, or use, in his country of origin.

57. On the evidence before me, I conclude that this claimant remains a genuine, present and sufficiently serious threat to public safety and that his removal to Italy under Regulation 21 of the EEA Regulations is not disproportionate, and is lawful.

DECISION

58. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision and substitute a decision dismissing the claimant's appeal against the Secretary of State's decision to deport him to Italy.

Date: Signed Judith AJC Gleeson
Upper Tribunal Judge Gleeson