**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: DA/00288/2017

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 29 October 2018** | **On 21 November 2018** |

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

**MR SAHAL FARHAAN**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: In person
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This decision is a remaking of the appellant's appeal against a deportation order made against him pursuant to Regulation 19(3)(b) of the EEA Regulations 2006.

2. The appellant is a national of the Netherlands, born on 23 July 1997. It is undisputed that he entered the UK with his mother in 2000. The respondent's deportation order followed convictions on 13 January 2016 for robbery, four counts of attempted robbery, threatening a person with a blade/sharply pointed article in a public place

and failing to surrender to custody. On 2 August 2016 the appellant was sentenced to 2 years, 6 months and 14 days in a Youth Offender Institution.

3. The remaking of this appeal is required following an error of law decision issued on 3 September 2018, reissued on 26 September 2018. In that decision the conclusion of the Upper Tribunal was that the First-tier Tribunal decision issued on 19 March 2018 allowing the appeal disclosed material errors. The first error was in finding that the appellant was entitled to the highest level of protection against deportation, that is, the "imperative" level, where the question of integration had not been holistically assessed. Further, there was no assessment of whether the appellant had obtained permanent residence, that status being essential for someone to qualify for the "imperative" level of protection; see **B v Land of Baden-Wurttemberg and Secretary of State for the Home Department v Franco Vomero (C-316/16 and C-424/16)**.

4. The errors of law and the issues to be addressed in this re-making were identified in paragraphs 8 to 10 and paragraph 15 of the error of law decision. At the hearing before me the appellant indicated that he had not seen the error of law decision. He was therefore afforded time to read the decision. When the hearing resumed, I summarised it for him, highlighting the key issues that had to be re-decided. An adjournment was also granted until later in the day in order for the appellant's mother to provide documents showing her work record in the UK.

5. Regulation 21 of the EEA Regulations 2006 provides that an EEA national who has permanent residence can only be deported where there are "serious" grounds of public policy or security. The same Regulation provides that an EEA national who has resided in the UK for a continuous period of 10 years prior to the deportation decision may only be deported where there are "imperative" grounds of public security.

6. The first assessment that must be conducted, therefore, is to establish the level of protection from expulsion to which the appellant is entitled. Thus far, the appeal had proceeded on the basis that the appellant had been continuously resident in the UK from 2000 onwards albeit it was disputed that he had been integrated for that period of time. The evidence given before me by the appellant and his mother, Mrs Kahin, was fundamentally altered that position. They were both entirely clear and consistent as to the appellant living in Kenya from 2012 to 2014, being educated with his brothers at boarding school. He did not return to the UK until the summer of 2014 after completing his A levels in Kenya.

7. The case of **MG v Secretary of State for the Home Department (C-400/12) [2014] 2 CMLR 40** sets down clearly in paragraph 37 that the ten-year period of residence necessary for a grant of enhanced or "imperative" protection "must be calculated by counting back from the date of the decision ordering that person's expulsion". That date here was 26 January 2017. The appellant cannot show ten years' continuous residence prior to that date where he was absent from the UK from 2012 to 2014. It is therefore my finding that he cannot benefit from the "imperative" level of protection.

8. Following Regulation 15, in order to qualify for the "serious" level of protection, the appellant must show that he is "a family member of an EEA national who is not an EEA national but who has resided in the United Kingdom with the EEA national in accordance with these Regulations for a continuous period of five years". For the reasons set out below, it is also my conclusion that the evidence does not show that the appellant has obtained permanent residence under the EEA Regulations 2006 and so does not stand to benefit from "serious" level of protection from deportation.

9. The appellant's mother provided a letter dated 12 October 2018 from Oasis Care and Training Agency confirming that she had worked for them from 21 June 2010 to 5 September 2014. She provided P60 documents for the tax year to 5 April 2015, 5 April 2014 and 5 April 2013, together with a P45 from 2014. Her oral evidence was that she had started working in 2010, had worked since then but had not worked prior to 2010. I accept that the evidence was consistent as to Mrs Kahin exercising Treaty rights from 2010 to 2015. The appellant was not present continuously during this period, however, as above, studying in Kenya from 2012 to 2014. He cannot show that he was continuously resident for 5 years as her dependent whilst she was exercising Treaty rights, therefore.

10. Following Regulation 21 of the EEA Regulations 2006 I must therefore assess whether the appellant represents "a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society". That assessment must encompass the other considerations set out in Regulation 21(5) of the EEA Regulations 2006, as follows:

    - the decision must comply with the principle of proportionality,
    - the decision must be based exclusively on the personal conduct of the person concerned,
    - the personal conduct of the person concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society,
    - matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision, and
    - the person's previous criminal convictions do not in themselves justify the decision.

11. Further, Regulation 21(6) states that:

> "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 in the United Kingdom and the extent of the person's links with his country of origin".

12. As above, the appellant was convicted of robbery, four counts of attempted robbery, threatening a person with a blade/sharply pointed article in a public place and

failing to surrender to custody. His sentence was 2 years, 6 months and 14 days in a Youth Offender Institution. Regulation 21 (5) provides that these convictions alone, albeit they are serious, do not in themselves justify deportation. The appellant must represent a "present" threat to public policy or public security.

13. The sentencing remarks here show that the appellant was charged with having threatened one of the victims with a knife. He did not plead guilty to that offence but was convicted of it. Before me he remained clear that he does not accept his guilt for that offence, arguing that the evidence on this point had not been consistent and should have been assessed otherwise by the jury. He maintained that he had not been carrying a knife. The appellant's inability to accept responsibility for his conviction for carrying a knife appeared to me to be a matter that had to be weighed against him when assessing whether he remains a "present" or current risk to public policy and security.

14. To that must be added the assessment in the Probation Service letter dated 24 October 2018 which confirmed that the appellant was found to show a medium risk of serious harm albeit he has obtained low scores in other risk assessments such as OVP, OGP and OGRS. The Probation Service letter is brief. It states that the appellant has shown positive motivation to address previous offending behaviour. Without further detail, however, it is difficult to place much weight to place on that statement and there is no reference to his refusal to accept his conviction for carrying a knife. I take into account that the Probation Service letter also confirms that the appellant has not provided any concerns in the supervision assessments he has attended with the Probation Service and has attended regularly. The letter states that he has shown "great compliance" in complying with his criminal licence and was engaging well.

15. There is the further issue of the appellant being called for sentencing whilst he was on bail but absconding, avoiding the police for 3 months. It appeared to me that this was also a factor that carried some weight as regards a "current" risk as it had to be set against the appellant's statements of remorse and showed that although the robbery may have been a one-off event, he later sought to defer or avoid taking responsibility for his behaviour and obstructed the due process of criminal justice system.

16. Having taken all of these matters into account, my conclusion is that the appellant does represent "a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society" where his offending was serious, he has been assessed as showing a medium risk of causing further serious harm and his acceptance of his behaviour and conviction is partial.

17. I must therefore consider the proportionality of deporting the appellant, taking into account the additional factors highlighted in paragraph 21(6) of the EEA Regulations 2006. There is no dispute that the appellant came to the UK in 2000 at the age of 3 and has lived here since then other than between 2012 and 2014 when he was in Kenya. This is an extensive period of time and comprises the majority of his

formative years. I accept that this will have led to significant social and cultural integration in the UK, even taking into account his criminal offences. The appellant speaks fluent English. I accept that his immediate family are in the UK, other than an uncle who remains in the Netherlands and his brother who was involved in the same criminal offending as the appellant and who was deported to the Netherlands pending his appeal against deportation. He has not been to the Netherlands since 2010. At the time of his offence, the appellant was studying at under-graduate level and was working part-time. All of these matters weighed on his side of the balance in the proportionality assessment.

18. Other factors weigh against him. As I have indicated above, his criminal profile is serious and he accepts only partial responsibility for what happened. The appellant is now aged 21 and in good health. Those are factors that will assist in re-establishing himself in the Netherlands. I accept that the majority of his family are in the UK but he appellant will have limited links to the Netherlands given that he left 18 years ago and has only been for a visit since then. He does have family support, there, however, an uncle and brother currently living there.

19. There are important factors weighing on both sides of the equation in this matter. The appellant's long residence, most of his formative years being spent in the UK and the offences, albeit serious, being limited to one occasion, in particular, weigh against deportation being proportionate. It remains the case that, on balance, it is my conclusion that it is proportionate and appropriate to deport here where the offence was undeniably serious, where the appellant continues to deny having carried a knife, where he also refused to accept the process of the criminal justice system by absconding rather than attending for his sentencing hearing and is assessed as being a medium risk of serious harm. In all the circumstances, it is my view that the respondent is entitled to deport the appellant under the EEA Regulations 2006.

20. For all of these reasons I refuse the appellant's appeal against the respondent's decision to deport him.

**Notice of Decision**

21. The appeal against deportation is refused.

Signed:  Date: 14 November 2018

Upper Tribunal Judge Pitt