Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: DA/00456/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 24 November 2017	**On 1 May 2018**

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

MR RACHID HADDADI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Harding, Counsel
For the Respondent: Mr P Singh, Home Office Presenting Officer

DECISION AND REASONS

1. A substantial body of this Decision was prepared immediately following the hearing, but regrettably the file was mislaid before the Decision was completed, and has only recently come to light. This Decision has accordingly been delayed for which this Tribunal apologises. This is particularly regrettable in light of the other delays referred to within this Decision.

2. This appeal has had an unfortunate history which it is not necessary to set out fully. There was an error of law hearing, which took place before Dr Storey, sitting as a Deputy Judge of the Upper Tribunal on 26 May 2017

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and in a Decision and Reasons promulgated on 6 June 2017 he found that the decision of the First-tier Tribunal had contained an error of law, in that the judge had not given adequate consideration to the facts of this appeal before concluding that the appellant was entitled to the highest level of protection. Judge Storey then directed that the appeal be adjourned to be reheard by myself, as I had previously given various directions in this appeal. He made directions as to the service of any further evidence or further submissions.

3. The appeal, as heard before Judge Storey, had been the now respondent's appeal (the First-tier Tribunal Judge having found in favour of the original appellant) but as an error of law had been found, I now refer to the parties as they were originally, that is to Mr Haddadi, whose appeal this now is, as again "the appellant" and to the Secretary of State, who is now again the respondent, as "the respondent".

4. The appeal came back before me on 24 August 2017 but regrettably the directions that Judge Storey had made had not been followed, the reason given by the appellant's Counsel being that he had not previously seen a copy of the directions which had been made. Having considered the decision as to error of law he did not seek to suggest that Judge Storey had been wrong to find the error of law in the way he did but he would now wish to raise arguments with regard to the question of whether or not the appellant would still be entitled to the highest level of protection under EU law, which, as he put it, would require a very careful and detailed analysis of all the authorities on the point, which clearly he was not in a position to undertake on that day.

5. It appears that the decision of Judge Storey had not been served on the respondent either, because Mr Singh, who was representing the respondent at that hearing too, indicated that he had also come prepared to argue the case on the basis that it was an error of law hearing and that he personally had not seen a copy of Judge Storey's decision either. In these circumstances, given that the representatives of both parties considered that it would be appropriate to adjourn the hearing I agreed that it was in the interests of justice to do so, because this would allow the appellant the opportunity of having his case properly presented and considered. I accordingly made a number of directions, with regard to the service of further evidence, the preparation of bundles, the preparation of witness statements which were capable of standing as evidence-in-chief, and the service of skeleton arguments.

6. Regrettably, none of these directions were complied with. Although the appellant had been directed to prepare a paginated bundle contained in a ring binder, which would have avoided the necessity to search for documents which in certain cases neither parties had available, this was not done. Nor was further evidence supplied until eight days before this hearing, and it contained very little new material, relying instead on a statement previously made by the appellant in August 2017, together with a letter in support from a witness whom it was intended to call, but he had not made a witness statement capable of standing as evidence-in-chief.

There was no evidence in support of this appellant from his wife (from whom he is separated but with whom the appellant told the Tribunal he wished to reconcile) and nor had any skeleton argument been filed with the Tribunal (one was handed to the Tribunal at the hearing itself). Mr Harding, on behalf of the appellant, apologised for the total failure to comply with the directions, the result of which was that court time was expended in adducing evidence from the appellant's witness which should and could more properly have been contained in a witness statement, that various documents had to be searched for amongst the various files instead of being immediately available and, had the appellant wished to make the submissions which it had earlier been anticipated might be made, there was no authorities bundle on which he could rely.

7. In the event, on behalf of the appellant, Mr Harding did not invite the Tribunal to find that this appellant was entitled to the highest level of protection (which, on the facts of this case, would have been extremely difficult, if not impossible) and instead founded his submissions on the basis that, as had been found by Designated First-tier Tribunal Judge Shaerf in a decision made in 2011, the appellant was entitled to permanent residence and therefore the middle level of protection under the EU Rules, which will be discussed below.

The Hearing

8. At the hearing, I heard evidence from the appellant and one witness, Mr Lawal, both of whom were cross-examined. Both were asked a number of supplementary questions; in Mr Lawal's case because no witness statement had been prepared on his behalf (although he had provided a one page letter of support). I also heard submissions on behalf of both parties and have considered all the documents within the file. Although I will not set out below everything which was said to me in the course of the proceedings, whether in the course of evidence or submissions, I have had regard to all the evidence and submissions which were made, as well as to all the documents contained within the file, whether or not they are referred to specifically below.

Appellant's Immigration and Criminal History

9. The appellant is a national of Algeria, who was born in November 1974 and claims to have arrived in the UK in 1997, having secured leave to enter on the basis of an Italian identity card which did not belong to him (as is clear from the decision of Judge Shaerf in 2011 referred to above). He was arrested in the UK on 3 April 1998 and admitted to using a false identity. Apparently he said that he had intended to claim asylum although he had not done so.

10. On 5 October 2001 he married a French citizen who was then exercising treaty rights in the UK and in 2002 his wife was issued a residence permit and he was issued with a residence document also as the family member of an EEA national. Both he and his wife were issued with documents confirming their respective rights of permanent residence in this country in

May 2007, and although the appellant later separated from his wife, who returned to France, it is, as already noted above, agreed that he has acquired the right of permanent residence in this country.

The Appellant's Criminal History

11. Although at paragraph 9 of his skeleton argument, presented to the Tribunal on the day of the hearing, Mr Harding suggests that "his offending, although persistent, is low level drugs-related" and that "he has never faced a conviction for supply or anything serious", since arriving in this country (on a false identity document to which he was not entitled) the appellant has been convicted on no less than thirteen occasions in respect of 26 offences, which does in fact include at least one offence of supplying drugs (cannabis) with intent to supply, for which he was sentenced to fifteen months' imprisonment in November 1999. This Tribunal, while recognising that this offence is not at the highest level of criminal offending, nonetheless does regard it as serious. The defendant's convictions include two fraud and kindred offences in 1998, eighteen theft and kindred offences between 2007 and 2016, four offences relating to police/courts/prisons (2008 – 2014) and two drug offences, as already referred to above, in 1998 – 1999. These are listed in the PNC record, the accuracy of which has not been disputed. His convictions are as follows:

28 April 1998: Possession of cannabis, using a false instrument with intent for it to be accepted as genuine and attempting to obtain and obtaining property by deception, for which he received concurrent sentences of imprisonment of four months.

26 November 1999: For possession of controlled drugs (cannabis) **with intent to supply**, imprisonment for fifteen months.

30 April 2007: Theft from person for which he was sentenced to a three month period of imprisonment, suspended for one year and ordered to carry out 100 hours of unpaid work.

27 February 2008: For the breach of suspended sentence unserved from his original sentence on 30 April 2007 the three month suspended sentence was activated.

On the same date he was sentenced for two other offences of shoplifting, for which he was imprisoned for twelve weeks, and also of failing to surrender to custody when he was supposed to, for which he received a further consecutive sentence of two weeks' imprisonment.

24 December 2009: For three separate offences of theft he was imprisoned to eighteen weeks' imprisonment and consecutive sentences of a further eighteen weeks and sixteen weeks (making one year in total).

22 February 2010: For an offence of theft (with two other offences of theft taken into consideration) the appellant was sentenced to 26 weeks' imprisonment.

9 November 2012: For four offences of theft, the appellant was sentenced to concurrent sentences of imprisonment of twelve months.

28 August 2013: The appellant was sentenced to twelve weeks' imprisonment, suspended for one year, for another offence of theft.

21 November 2013: For another offence of theft (this time from a motor vehicle, three months earlier) the appellant was sentenced to twelve weeks' imprisonment.

10 November 2014: For an offence of theft together with a failure to surrender to custody the appellant was committed to the Crown Court for sentence where on 12 December 2014 he was imprisoned for fourteen weeks for the theft and then his previous suspended sentence was activated, to be served concurrently.

13 June 2015: For attempted theft from the person the appellant was sentenced to 26 weeks' imprisonment.

27 July 2016: The appellant was imprisoned for 26 weeks for yet another offence of theft.

12. Thereafter the appellant was in immigration custody, from which he was released only some six months before this hearing in May 2017, since which time he has not been in any further trouble.

13. Unsurprisingly, on 3 November 2010, the respondent notified the appellant of her decision to deport him. As noted within the letter giving the reasons for making this decision, the respondent had previously (on 6 March 2008) served the appellant with a Warning Letter, warning him of liability to deportation if he continued committing offences, but, as is apparent from the record of the appellant's criminal history set out above, this warning did not have the desired effect. The respondent acknowledged that the appellant was entitled to permanent residence in the UK as the family member of his French wife, who was exercising treaty rights in this country, and that accordingly "as a result it is necessary to establish that your deportation is warranted on serious grounds of public policy or public security".

14. The respondent considered that the appellant's criminal record suggested "an established pattern of behaviour" and that "in light of the full circumstances of [his offending … this was] indicative that you pose a significant threat to the safety and security of the public of the United Kingdom". The respondent went on to state within this letter that "Should

you reoffend your offence will be of a similar or more serious nature and ... your deportation is justified on serious grounds of public policy".

15. The respondent had regard to the appellant's personal circumstances in accordance with Regulation 21(6) of the EEA Regulations 2006, but considered in all the circumstances that the deportation of this appellant was proportionate.

16. The appellant appealed against this decision and his appeal was heard at Taylor House on 21 December 2010 before Designated Immigration Judge Shaerf, sitting in a panel together with a lay member, Mrs A J F Cross De Chavannes. In a determination promulgated on 6 January 2011, the Tribunal allowed the appellant's appeal.

17. As is clear from this determination, at the time of this decision, the last conviction recorded against the appellant was that on 22 February 2010, when he had been sentenced to 26 weeks' imprisonment at Horseferry Road Magistrates' Court for three offences of theft.

18. At paragraph 9, the panel noted that the appellant had accepted that he had committed the crimes of which he had been convicted, but expressed remorse for them, and had stated that "He now wanted to lead a 'normal life' working and living with his wife".

19. The panel had regard to the 2006 Regulations, and in particular to Regulations 19(3)(b) and 21(3), having regard to which his removal had to be justified on serious grounds of public policy. The panel had regard to paragraph 4 of *LG and CC (EEA Regs: residence; imprisonment; removal) Italy* [2009] UKAIT 00024, and noted that "the respondent accepted that the threshold for 'serious grounds' was very high".

20. At paragraph 20 the panel found as follows:

> "20. We accept, although it is no excuse or justification, that the appellant's earlier criminal activity (leaving aside entry on a false document) appears to have been contemporaneous with difficulties he had experienced in finding employment and in his relationship with his wife, the latter influenced at least in part by the former. The appellant admitted the most recent offences had been motivated by a need to fund his drug habit. In oral testimony the appellant had explained the three months suspended sentence had been activated because of his failure to report to his probation officer. Once he had reported late and once he had failed to report because at the time he had recently been using drugs. We accept the appellant's drug habit developed for much the same reasons as already mentioned as well as the fact that, as the appellant himself accepted, he had fallen in with the 'wrong crowd' at a time when his lack of work and deteriorating relationship with his wife had made him vulnerable".

21. The panel although noting that the appellant had been issued with a Warning Letter, nonetheless appeared to accept the explanation given by the appellant for his previous offending. At paragraph 26, the panel found as follows:

> "26. None of the appellant's offences have been of a violent or sexual nature. He has given reasons why his offending occurred in 1998/9 and in 2007 and 2009/10. The evidence on which a risk of re-offending in the NOMS1 has been made would appear to be historic and of limited value. Consequently the weight which might be placed on the risk of re-offending assessment highlighted in the NOMS1 is much reduced from the weight which would normally be given to it".

22. Then at paragraph 27, the panel went on to find as follows:

> "27. We are not persuaded that the offences for which the appellant has been convicted together with the limited weight which can be attached to the assessment of the risk of re-offending indicate that the proposed deportation of the appellant is justified by reference to serious grounds of public policy. For these reasons we allow the appeal under the 2006 Regs".

23. In other words, the panel was persuaded that notwithstanding the appellant's poor record of previous offending, he had given sufficient explanation as to why his circumstances were now different from what they had been when those offences had been committed to justify its conclusion that the appellant did not represent a serious risk of reoffending. As noted, it found in terms that the evidence upon which the risk of reoffending had been made "would appear to be historic and of limited value".

24. Regrettably, and notwithstanding that at the very least by this time the appellant must have appreciated that he had come very close indeed to being deported, the Tribunal's confidence in the appellant's ability to rehabilitate himself within society was shown to be misplaced, because he continued to offend, as recorded within this Decision, committing numerous further offences.

25. The appellant continued offending even though the respondent issued further Warning Letters to him, and because of this offending the respondent ultimately issued a notice of intention to deport the appellant on 10 September 2015, which was followed by a decision to deport him made on 1 October 2015. It was noted in this decision that following the letter of 10 September 2015, the appellant had raised no grounds as to why he should not be deported. The decision was made having regard to Regulation 21 of the Immigration (European Economic Area) Regulations 2016, the respondent being satisfied that the appellant "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".

26. The appellant appealed against this decision and his appeal was heard before First-tier Tribunal Judge Fox, sitting at Hatton Cross on 19 January 2016. In a Decision and Reasons promulgated two days later, Judge Fox allowed the appellant's appeal. His reason for doing so was that he considered that the appellant had "acquired ten years' continuous residence in the UK on 31 May 2012" (see paragraph 13 of the Decision) and that accordingly (at paragraph 15) "The burden therefore lies with the respondent to demonstrate that the appellant's exclusion from the UK is based upon imperative grounds of public security".

27. Although Judge Fox noted that the probation report had concluded that it was more likely than not that the appellant would reoffend, and that he "has demonstrated a persistent disregard for law and order" (at paragraph 50) nonetheless, at paragraph 52 he concluded that "When the evidence is considered in the round the appellant's conduct falls short of requiring his exclusion on imperative grounds of public security".

28. The respondent appealed against this decision, the main ground of appeal being that Judge Fox had applied the wrong test. Following the hearing before Deputy Upper Tribunal Judge Storey, on 26 May 2016, Judge Storey concluded, in his Decision made on 6 June 2017, that the Decision of the First-tier Tribunal had indeed contained an error of law, in that Judge Fox had not given adequate consideration to the facts of this appeal before concluding that the claimant was entitled to the highest level of protection. Judge Fox had not appreciated that he needed to count back from the date of the respondent's Decision at the end of September 2015, rather than forward, and, as Judge Storey noted at paragraph 6 of his Decision, "Had he done so he would then have had to engage with the fact that in the previous ten years the claimant had had several terms of imprisonment".

29. The appeal then came before me for rehearing, after the further adjournment which had been necessary, for the reasons which have been set out above.

30. At the substantive hearing before me on 24 November 2017, Mr Harding, representing the appellant, informed the Tribunal at the outset that he would not be submitting that the appellant was entitled to the highest level of protection. It was conceded that the appellant could not show that his integration had reached such a level. Accordingly, the Tribunal had to decide whether or not the deportation of this appellant was justified on "serious grounds of public policy or public security".

31. The relevant Regulations set out within the 2006 Regulations provide as follows:

> "**Exclusion and Removal from the United Kingdom ...**
>
> > 19(3) ... an EEA national who has entered the United Kingdom or the family member of such a national who has entered the United Kingdom may be removed if - ...

(b) 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 ...

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

The Evidence

32. As noted above, the Tribunal heard evidence from the appellant and also from Mr Lawal, both of whom were cross-examined. Submissions were also made on behalf of both parties.

33. The appellant relied upon the witness statement which he had made, dated 11 August 2017 and was also asked supplementary questions. He claimed not to have taken any "narcotic drugs" since he was arrested in 2016. He had previously used cocaine and heroin. He claimed that he would "never look back" but that he was "looking forward".

34. The appellant told the Tribunal that his wife had gone to live in France in 2008/9, but that she comes and goes because she is employed as a stewardess by Japanese Airlines. He now realised, having been in and out of prison that that life was "not for me" and he intended to prove to his wife and all the people around him, including his family, that he was a good person, "so that is what I am doing now". He had gone back to work and kept himself away from the wrong people he had been mixing with and he always went to his appointments. What he was looking for now was "a chance to come back to my life". He had spoken to his wife that morning and he hoped to have a family and children.

35. In cross-examination the appellant was asked if he was still married, to which he replied that he was but that they were separated. He claimed always to have been in contact with her. She was aware of his appeal. When asked why she had not made a statement to support his appeal, the appellant said that this was "because I had given her trouble before and I didn't want to give her more trouble, so I didn't ask her for a statement".

36. When the question was asked again, his explanation this time was that his solicitors had not advised him to get a statement.

37. He had no family living in the UK, but he did have family in Algeria, a mother, a brother and two sisters.

38. With regard to the appellant's evidence that he now realised that "this life is not for you", he was asked whether it was right that as he says at paragraph 25 of his witness statement he had sought help previously in 2012 and 2013, and whether he had on that occasion also felt that the life he was living was not for him. The appellant's answer was that although in 2011 and 2013 he was saying "enough is enough" he did not really mean it then. At that time he thought he would do it by himself, but this

time he realised he needed support. I note that this answer is not consistent with what was stated at paragraph 25 of the appellant's witness statement which was that "I had previously sought help with my drug usage in 2011 and 2013, however [this] did not succeed".

39. Mr Lawal, who is described as the Director of TMP Projects Ltd, had written a one page "character reference" for the appellant which was included in the appellant's bundle, and was asked a number of supplementary questions. He said that he had known the appellant for twenty years, having been the head chef in one of the restaurants in Chelsea. The appellant had come in looking for work and Mr Lawal had taken a liking to him and they have formed a friendship.

40. When asked whether he was aware that the appellant had had a difficult time in the UK and been in and out of prison, Mr Lawal said that he knew this through mutual friends but that he was "not involved in that part of his life". He also claimed not to have known that the appellant had had a drugs problem. He had employed the appellant since May and he was "an all-rounder".

41. When Mr Lawal was asked by the Tribunal as to when he had been aware that he had a drug problem, he answered that this was probably for about two years, before he came to work for him. He said that he was now a "changed man", but when asked, he accepted that previously he had not seen the other side of him.

42. In cross-examination, Mr Lawal agreed that he had previously worked with the appellant at Chez Gerard in about 2001 for two years, and also at the City Brasserie off Fetter Lane for about three years from 2003, so about five years in total. He had however lost contact with him for about four or five years while he had been working in Hackney.

43. When it was put to him that the appellant was committing crimes during this time but that in his statement he had said that the appellant "has always displayed a high degree of integrity, responsibility and ambition" and was "definitely a leader rather than a follower" and that "in addition to his excellent scholastic accomplishments, he has proved his leadership ability by organising mini cooking lessons for small underprivileged children to cook" and was asked why it was that he thought he had changed, Mr Lawal said that the appellant had encouraged him to open a new restaurant and he had always encouraged him "as a friend".

44. Mr Lawal said that the appellant had told him that he had had trouble with his wife. He had been the best man at his wedding but he did not have direct contact with her because she was back and forth from France.

45. Mr Lawal then said that he believed that the appellant was now getting on better with his wife but when asked if he knew why she was not at the Tribunal for this hearing he said he believed that she was a travel agent and had other commitments. He could not say why it was that she had not written a statement in support.

46. I note that in his character reference Mr Lawal had also said that the appellant's "good judgement and mature outlook ensure a logical and practical approach to his endeavours".

Submissions

47. In his skeleton argument prepared the day before the hearing but which was served at the hearing, Mr Harding sought an adjournment pending the outcome of the CJEU in the case of *Vomero*. However, at the hearing itself Mr Harding did not seek to argue that the respondent needed to show imperative grounds (for the reasons given by Deputy Upper Tribunal Judge Storey when finding an error of law) and was content for the hearing to proceed on the basis that serious grounds only needed to be established, in accordance with Regulation 21(3).

48. Having set out Regulation 21, the appellant's substantive case is summarised from grounds 9 to 14, as follows:

> "9. The appellant argues that his offending, although persistent, is low-level drugs-related. He has never faced a conviction for supply **or anything serious** [my emphasis].
>
> 10. He has adduced evidence to substantiate the fact that he is now drugs-free ... he is in work ...
>
> 11. The threshold is high under Level 1 and the appellant's offending is not of a gravity to meet it, let alone Level 2.
>
> 12. He has reformed and is not a threat and the test in Regulation 25(5) the threat is a present threat, not a past tense threat.
>
> 13. Applying the matters set out in Regulation 26(6), it is submitted the appellant has been here since 1998 (nineteen years), he is 43 years old and has spent most of his adult life here, he is married to an EU national, he has a rehabilitative structure in place to facilitate his continued progress and is culturally integrated into the UK (also see *Vomero*, AG opinion however on this question).
>
> 14. It is submitted if not adjourned the appeal should be allowed in any event".

49. In oral argument, Mr Singh, on behalf of the respondent, relied upon the reasons set out within the deportation order itself. After the decision of the Tribunal in 2011, allowing the appellant's appeal against the previous deportation order which had been made, there had been a series of Warning Letters sent following further convictions. The 2010 decision had not deterred the appellant from reoffending. In the circumstances it was clear that there was a serious risk of the appellant reoffending, and the type of criminal activity which he carries out scares the public, especially

where he is challenged. Also, on previous occasions he had refused to give himself up to the authorities.

50. Although there is no record of violence, his convictions were mainly theft-related including theft from the person. In light of the evidence which had been given to the Tribunal, the Tribunal should place little weight on his protestations that he was now reformed.

51. So far as Mr Lawal's evidence was concerned, he apparently had no knowledge of what the appellant did outside his limited times of work and had only very recently become aware of his drugs convictions. The appellant himself had said that he had tried to stop in 2011 and 2013 and that he had "sought help", but there was no more reason to believe that he would stop offending now than there had been then, and he had repeatedly failed to reform.

52. In his oral submissions, Mr Harding stressed again that the respondent needed to establish that his deportation was justified on "serious grounds of public policy", and that this was a harder test than under Regulation 21(5)(c) that "the personal conduct of the person concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society". Although the language used within the Regulations was to some extent tautologious, it was clear that there were three levels of protection, and that the threshold for the second level must be significantly higher than the first.

53. Accordingly, the first question was what the "fundamental interests of society" which needed protection were. That threshold had to be met before moving on to the second threshold, which required there to be serious reasons for deporting, over and above what would have been otherwise required.

54. So the first question was whether the appellant's behaviour was such that the requirement within Regulation 21(5) was met. If so, the Tribunal would nonetheless have to go on to consider whether the threshold set out within Regulation 21(3) was satisfied.

55. With that legal framework in mind, the appellant's primary submission was that the threshold set out within Regulation 21(5)(c) was not met. Although it was acknowledged that this appellant had a terrible record of persistent offending, and that it would also be right to say that he had been given a great deal of opportunity to show that he had reformed, and that he had previously been given a chance by the First-tier Tribunal in 2011, nonetheless we were dealing in this case with someone with a drugs problem which was a scourge on society.

56. The appellant had persuaded a probation officer that he was drugs-free, having been released in May 2017 and (it was submitted on the appellant's behalf) on the evidence before the Tribunal the appellant "has demonstrated that he is a reformed character". He had done drugs courses in prison and had been drugs-free in prison.

57. In any event, the appellant still did not represent a sufficiently serious threat that he should be deported; further, when one then considers that he is entitled to permanent residence, and that the threshold within Regulation 21(3) has to be satisfied, that test could not be met in this case. These were the essential elements in this case.

58. Mr Harding accepted that in the event that the Tribunal did not accept his submissions with regard to paragraph 21(5)(c) and 21(3) it was very unlikely that he could persuade the Tribunal that his removal would nonetheless be disproportionate, having regard to Regulation 21(6).

Discussion

59. It is of course the case that because the respondent's decision to deport this appellant has to be considered with regard to the 2006 Regulations, and in particular Regulation 21, this Tribunal cannot have regard to the revulsion felt by members of the public generally towards persistent criminals or to the need generally to deter foreign criminals from offending. The Tribunal must have regard first to whether or not the personal conduct of the appellant represents a "genuine, present and sufficiently serious threat affecting one of the fundamental interests of society" (Regulation 21(5)(c)), and then, if it does, whether there were "serious grounds of public policy" justifying his deportation.

60. Although, as noted above, at paragraph 9 of his written submissions contained in his skeleton argument, Mr Harding has suggested that the appellant's "offending, although persistent, is low-level drugs-related" and that he "has never faced a conviction for the supply or anything serious", not only is it factually incorrect to state that he has never been convicted of supplying (his convictions include a fifteen month sentence of imprisonment in 1999 for possessing Class B drugs, cannabis resin, with intent to supply) but nor can his convictions properly be said not to be "serious". The appellant has numerous convictions for theft, resulting in prison sentences, and notwithstanding numerous Warning Letters and being given a chance by the First-tier Tribunal panel 2011, he has continued to offend. The claim now made on his behalf that he is a "reformed" person has a hollow ring to it when one considers his record. This Tribunal has no hesitation in finding that he is not.

61. Although the appellant now claims that he enjoys a better relationship with his wife which will be an incentive to him to continue to put his past behind him, it is notable that not only was his wife not present to give evidence on his behalf, but she did not even provide a witness statement. The appellant himself gave two conflicting explanations for this. In the first place he said he did not wish to give her anymore trouble, because he had given her trouble before, and that this was why he had not asked her for her statement, but then, only a few moments later, he claimed that she had not given a statement because his solicitor had not advised him to get one. Then, giving evidence on behalf of the appellant, Mr Lawal gave yet

another explanation for why the appellant's wife was not present, even though he believed that she knew about the case, which was that she was a travel agent with other commitments, and was therefore unable to be present at the hearing. This of course is also not consistent with the appellant's evidence that his wife was an air stewardess for Japan Airlines. Even though Mr Lawal claimed to have been the best man at the appellant's wedding, he seemingly had very little knowledge of the appellant's wife or of the appellant's life outside the working environment, for the periods when they had been working together.

62. With regard to Mr Lawal's evidence itself, very little weight can be given to anything he says, because apparently, he had no knowledge of the appellant's previous drug history. Given this lack of knowledge, it is surprising, to say the least, that he felt able to say that he was now a "changed person".

63. In my judgement, it is a fundamental interest of society that members of the public are able to go about their daily lives without the constant threat to their property which this appellant continues to represent. The threat he represents is a genuine, present and sufficiently serious threat that there is a clear public interest in deporting him. So far as Regulation 21(3) is concerned the deportation of this appellant is justified on "**serious** [my emphasis] grounds of public policy". This appellant has been given chance after chance to stop offending; he has shown by his conduct that the risk he continues to represent is a real and serious risk, from which society in general needs to be protected.

64. With regard to Regulation 21(6), I bear in mind that the appellant has no family in this country. Even if he has some kind of relationship with his wife, she no longer lives here and visits the UK only sporadically. His mother and siblings all live in Algeria. He is neither particularly young nor particularly old, and there is nothing about his health or economic situation which would make it important that the appellant remains in the UK rather than returning to Algeria where his family lives. Although he has resided in the UK for a lengthy period, his social and cultural integration is not sufficiently deep as to prevent him going in and out of prison for his repeated offending.

65. In summary, the deportation of this appellant is entirely justified having regard to Regulations 21(3) and 21(5)(c) of the 2006 Regulations, and is also entirely proportionate having regard to Regulation 21(6). Accordingly, the decision of the First-tier Tribunal must be set aside and replaced with a decision dismissing the appellant's appeal.

Decision

The decision of First-tier Tribunal Judge Fox allowing the appellant's appeal is set aside and replaced with the following decision:

The appellant's appeal is dismissed, under the Immigration (European Economic Area) Regulations 2006.

Signed:

Upper Tribunal Judge Craig Date: 26 April 2018