



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00150/2019

THE IMMIGRATION ACTS

Heard at Field House
On 22 November 2019

Decision & Reasons Promulgated
On 31 December 2019

Before

UPPER TRIBUNAL JUDGE HANSON

Between

ISHMAEL MUSA KAMARA
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Professor Rees, instructed by Chris & Co Solicitors.

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer.

DECISION AND REASONS

1. In a decision promulgated on 28 August 2019 the Upper Tribunal found a judge of the First-Tier Tribunal had erred in law in a manner material to its decision to allow the appellant's appeal against the order for his deportation from the United Kingdom.

2. The matter comes back before the Upper Tribunal today for a Resumed Hearing after which this Tribunal shall substitute a decision to either allow or dismiss the appeal.

Background

3. Mr Tufan confirmed there is no factual dispute between the parties. There was therefore no need for oral evidence from either Mr Kamara, his stepfather, or mother. The matter proceeded by way of submissions only.
4. Mr Kamara was born in Sierra Leone on 10 May 1993 but is now a citizen of Belgium and therefore a European national.
5. Mr Kamara lives with his family at the address provided in London and claims to be totally dependent upon his parents as he is not working or in full-time education.
6. Mr Kamara is the subject of an order for his deportation from the United Kingdom as a result of his criminality.
7. Mr Kamara's PNC printout discloses the use of three alias, an alias date of birth, and two convictions for two offences.
8. On 16 July 2015 at the Basildon Crown Court the appellant was convicted of Grievous Bodily Harm with intent on 6 February 2015 to which he pleaded guilty. The appellant was sentenced to 8 years imprisonment and ordered to pay a victim surcharge of £120.
9. The second conviction, on 8 June 2016 at Norfolk Magistrates Court, is for the offence of 'Without authority possessing inside a prison an item specified in s40D(3b)' for which, on 30 January 2016, Mr Kamara pleaded guilty and was sentenced to 4 weeks imprisonment, a victim surcharge of £115, and the items made subject to a forfeiture and destruction order.
10. The prison sentence of 8 years clearly reflects the serious nature of the offence. In his sentencing remarks handed down at the Southend-on-Sea Crown Court on 16 July 2015 Mr Recorder Gallagher stated:

"Ishmael Kamara, will you please stand. I have to sentence you for an offence of wounding with intent, contrary to Section 18 of the Offences Against the Person Act 1861. You pleaded guilty, and pleaded guilty at the earliest opportunity, to the commission of the offence, the offence having taken place on 6 February of this year, when you struck and wounded Nathaniel Maboo with an 11 inch kitchen knife, and that is a kitchen knife with a serrated edge and a 7 inch blade.

It gives me no pleasure whatsoever to be sentencing you, a young man some 22 years of age. I have listened to what your Advocate has said on your behalf, and I take it into account all that she submits to me. I have also read a letter sent by your great-uncle, and have read the detailed pre-sentence report, dated 13 July 2015.

When all is said and done, however, this was a villainous and murderous attack upon a wholly innocent citizen going about his lawful business. By that I mean travelling on the same train, because this offence took place on the late-night train from Fenchurch Street to Southend, and it is, I have to

say, by the grace of God alone that you are not facing a very much more serious charge.

You struck with murderous intent. That you were deflected from your design and that your blow was deflected from its target was because, by good fortune, Mr Maboo, the victim, managed to throw his hands up as you struck. The result was that the blow was partially deflected but Mr Maboo's hand was quite literally skewered and impaled by the force of the downward thrust of the blow that you delivered. One of the witnesses who treated him immediately after the blow said that she could see right through his hand afterwards.

It must have been a terrifying incident for Mr Maboo, and indeed for all the other lawful travellers on the train that night. I have little doubt that Mr Maboo was not merely frightened, but that he was left in great pain, and doubtless sustained considerable physical and psychological injuries.

I do not accept any version put forward on your part to the extent that you are not looking for trouble. You were out looking for trouble. Mr Maboo, who as far as I am aware, do you did not know, was entirely innocent of any wrongdoing, who did not seek to get involved with you. Indeed, you had to go, I think it was, through at least one railway carriage before you reached the carriage that he was in.

You have said in the report that I have before me, and I am quoting from page 3, that you initially were angry because you felt your victim was disrespectful towards you. I don't accept that. You showed absolutely no respect for your fellow human being. You did not even have the guts or courage to face up to him man-to-man. In your what I can only describe as abject cowardice, you armed yourself with a weapon and went back and struck what I have described as a murderous, or potentially murderous blow, and indeed sought to do more than that.

You became involved in the first place by attacking or assaulting Mr Maboo when he was sitting down in that carriage. That attack was without any warning or justification, and was indeed, in itself, cowardly, supported, as it was, by others. Unable to achieve your ends, and quite possibly bested by the initially seated Mr Maboo, you went back to get your knife. There were a number of people on the train who sought to prevent or break up any violence, and Mr Maboo, as I have indicated, showed no desire to get involved in a fight. He made no move to come after you or to behave aggressively towards you.

What you did was to go and get a knife from one of your friends. You must have known that knife was there, it is abundantly clear to anyone viewing the CCTV that you went straight up to Mr Oseboti, who had a knife in his rucksack, which was on his back. You remove the knife and then returned to the carriage in which Mr Maboo was sitting. It is abundantly clear that you had one thought and one thought alone in your mind, and that was to cause really serious harm to Mr Maboo.

It is worth recalling the words of witnesses present on the occasion. One of them describes you, when getting the knife, as moving with purpose, completely focused. Another, when describing you going back with the

knife, which was held behind your back so as to be concealed, he described you as “a man with rage in his eyes, he was so angry, a serious look on his face I’ll never forget. His eyes were wild and bulging, he was charging down the aisle, a man intent on a mission”.

Having viewed the CCTV, I can understand exactly why those witnesses described you in those terms. What is visible to anyone seeing that CCTV confirms precisely that evidence.

It is also clear that alarm was caused to the passengers. One passenger described pushing his wife out of the way because he feared for her safety. He feared also for his. He was a man who in fact tried to persuade you not to engage further in violence, but to no avail.

Having got that knife, you returned back up the train, to the carriage in which Mr Maboo was sitting. Again, you are supported by others who were following you, a number of them, pulling up their hoods as they went. You ignored everyone trying to restrain or divert you, and struck, and tried to strike at Mr Maboo. In fact, on this occasion you also failed because you are unable to get sufficiently close to him to deliver a blow. As it happened, the train stopped. Even then you did not desist, quite the reverse. You got out of the train at the door nearest to you, then re-entered via the next-door up, so that you are now close to Mr Maboo, and you then struck the blow, subject to this charge.

This was, as I have indicated, and must be clear from what I have said, a deliberate, sustained and determined vicious attack upon an unarmed and defenceless individual. It was carried out in public, on a train, without the slightest regard for either the individual you attacked or indeed anyone else on the train. It seems that you are concerned with respect, I have to say you showed none.”

11. The Sentencing Judge finds it was a sustained and repeated assault on the same victim, that there was a significant degree of premeditation to the extent Mr Kamara went down the train after the first assault, obtained a knife, and then returned to his victim determined to strike with the use of a particularly nasty weapon, with an intention to commit a more serious harm than actually resulted from the offence. The Judge found Mr Kamara caused more harm than was necessary for the commission of the offence deliberately targeting a vulnerable victim. Factors increasing the seriousness were also found to be the location in public on a train, a late-night train, where there were a number of members of the public present. The Judge also notes an attempt to conceal or dispose of the evidence in what is described in an attempt by Mr Kamara to conceal himself as when he got on another train he changed his clothes although having got off the train and after the doors close the Sentencing Judge noted Mr Kamara actually tried to get back on again to continue the assault against Mr Maboo but was unable to do so.
12. The Sentencing Judge notes the starting point for the offence is a period of 12 years in custody, the category range of 9 to 16 years, for which discount was given to Mr Kamara for his plea resulting in a sentence of 8 years imprisonment.

13. The comments of the Sentencing Judge paint a clear picture in the mind of anybody reading them of a violent unprovoked attack. Mr Kamara, whilst minimising culpability for this and events leading to adjudications in prison, blames the fact he suffers from PTSD and has anger management issues.
14. It was found the First-Tier Tribunal Judge had erred in law by speculating as to whether Mr Kamara had received anger management counselling and in suggesting that in light of the history the Probation Service would have been more than likely to address this in their work with him; which was not a finding supported by the evidence available at that date.
15. It was found at [11] of the Error of Law decision that there are three aspects to the appeal which need to be properly considered the first relating to the fact Mr Kamara does not appear to accept responsibility for his actions, the second being the nature of any services or support available to Mr Kamara and whether he has made use of the same and, third, whether the available support or intervention/assistance will make any difference in relation to identifying and mitigating the issues of concern; sufficient to enable a finding to be made that Mr Kamara does not pose a real risk in the future.
16. Directions were issued by the Upper Tribunal including those in the following terms:
 - a) The appellant shall no later than Friday, 28 October 2019 file with the Upper Tribunal and send to the respondent's representative a consolidated, indexed, and paginated bundle containing all the evidence upon which he intends to rely, including an expert report from a Clinical Psychologist specialising in anger management issues. Witness statements in the bundle must be signed, dated, and contain a declaration of truth and shall stand as the evidence in chief of the maker who shall attend for the purposes of cross-examination (if any) in re-examination only.
 - b) Applications for evidence such as the CCTV referred to by the Sentencing Judge for use at the forthcoming hearing or for disclosure to the Clinical Psychologist must be made without delay to ensure appropriate arrangements can be made by the appropriate party.

The evidence

17. Mr Kamara has filed a number of witness statements in support of his appeal, the original of which is dated 15 April 2019. In that Mr Kamara confirmed his stepfather is the sole breadwinner in the family unit in the United Kingdom. Mr Kamara confirms he lives in the property with two of his three siblings, both of whom have special educational needs, and that his parents care for his sister's child as a result of her own health issues.
18. Mr Kamara states he entered the UK in December 2011 prior to which he lived with his family in Belgium. The appellant had entered Belgium with his two younger brothers who were 11 and 14 years of age on 10 July 2010 to join their parents prior to which they lived in Freetown, Sierra Leone, Mr Kamara's

place of birth. Prior to coming to the United Kingdom Mr Kamara's stepfather had already applied for him to be issued with a Belgian passport which he was able to collect in July 2012. Mr Kamara claims that since he returned to Belgium to collect the passport he has not been back to that country.

19. Mr Kamara claims he has lived in the United Kingdom since December 2011 and only lived in Belgium for about 18 months in total and that he was just over 17 years of age when he joined his parents in Belgium.
20. Mr Kamara states that whilst in Belgium his mother suffered an horrific injury from which, while she has physically recovered, she has never fully recovered from the trauma.
21. Mr Kamara confirms that his family visited him at least once a month and sometimes more frequently whilst he was in prison.
22. Mr Kamara claims he had never been in trouble before he came to Europe and that when he arrived he was struggling to cope as he was not particularly happy most of the time, did not know how to handle things, and had no one to talk to about his situation. Since being granted immigration bail Mr Kamara states he has been able to meet with his Probation Officer and talk about his life which has been helpful. Mr Kamara claims that if he is given more counselling sessions where he could talk more about his life it would make a lot of difference to how he views his life and will help him cope with the demands upon him. The siblings have severe autism and mental health problems which Mr Kamara claims can be demanding.
23. In relation to his criminal behaviour the Mr Kamara states:
 14. I have no history of aggressive criminal behaviour to the level which led to my conviction. Whilst I was in prison, I had time to think about what happened. I accept that I could have managed the situation far better. I regret my actions and I sincerely hope the victim has fully recovered from the injury. I would like to personally apologise to him for my action. My solicitor has suggested that if possible, I should try and write a letter of apology to my victim expressing my remorse but advised that I should not try to look for him as he may not want to see me. He has advised that I should discuss this with my Probation Officer before doing anything.
 15. There are issues in my life which I would like to discuss with a Counsellor so that I could get assistance to deal with those issues. I would like the opportunity to start with a clean slate and to try and rebuild my life in the UK. My solicitors advised that if there are issues in my family which I do not feel able to discuss with my parents, that I should speak to my Probation Officer or my GP so that I could get help with Counselling.
 16. I feel that I have let down my siblings as I was not there to look after them. I want to be able to continue to be there for them. I worry that their condition may get worse and they may never get better. That is why I particularly do not want to be deported because that will mean being separated again from my family especially my siblings for which they will always need help. My [sic] mother alone will not be able to cope.'
24. In relation to work undertaken in prison Mr Kamara confirms he took part in many courses both to address his anger and to equip him for the labour market.

English is his main language and he claims he will be able to lead a far better and productive life in the UK. At [18] Mr Kamara states:

'18. I do not particularly believe that my criminal conviction will remain for long a barrier to my ability to start afresh. I do believe that if I am deported to Belgium, I would be separated from my family who are all here in the UK. Since leaving Belgium, my stepfather no longer has family ties there. Although he has lived there with my mother for longer period, my father was working in the UK and I believe he would prefer to continue to make his life here.'

25. Mr Kamara claims he believes he has a better chance of rebuilding his life in the UK than in Belgium claiming he does not speak the Belgium language having lived there for less than two years and not having strong social or economic ties to Belgium.

26. Mr Kamara has been in education at Lambeth College in London since arriving in the United Kingdom and worked in a restaurant part-time and states he would like to return to employment.

27. In relation to risk of future offending Mr Kamara states:

'21. My solicitor has suggested that I must keep in contact with my Probation Officer that I must continue to report to an Immigration Officer as I am required to do. I have realised my mistake and I am working on my anger so that in future if and when I find myself in the same situation which led to my imprisonment, I would be able to handle it better. That is why I need to remain with my family as I need their ongoing support to help me get better. Without their support which they showed me while I was in prison, I will not be able to manage on my own. That is why I believe that deportation is not an option in my situation. I am redeemable and I need the support of the British Government to help me in my rehabilitation.

22. I have produced in my appeal bundle copies of the certificates which I was awarded for the courses that I attended whilst I was in prison. I do have a genuine desire to turn my life around. But I cannot do so successfully if I am deported or made to feel that I am not wanted in this country.'

28. In his supplementary statement dated 4 November 2019 Mr Kamara spends a lot of time complaining about the fact he is not allowed to work. Mr Kamara also confirms he has seen a Psychologist, whose report is discussed further below, and claims he is going to need help. At [8-18] he states the following:

'8. I sincerely believe that it would help if I am able to access counselling therapy so that I can at least talk about my home situation. I love my family but I do need a break. It would be nice to be able to take a break from my home life. I am 26 years old still living at home, not working. I am old enough to have a place of my own and making plans for my future. That is not happening and, I am not sure where I am heading. I am scared of what the future holds for me right now and I don't have someone to talk to, someone to listen to how I feel.

9. I do believe that how I feel gets bottled up inside of me and I do not understand how to process this in a sensible and safe manner. I am not a danger to members of my community. But I do need the authorities to

understand my situation. It is frustrating that I am labelled a potential risk to society. I am not a danger to society. I do need the authorities to understand and appreciate what I am going through and to provide me with support.

10. I have been explained what it means to be deported. First of all, I do not have private or family life in Belgium. My family moved to the UK and we all live here. I did not live long enough in Belgium to form a life of my own. I had my family but I did not establish roots in the community in Belgium to be able to live on my own. I do not speak nor understand the language. I was granted Belgian citizenship on the platform of my father under the European law. The decision to deport me to Belgium because of my criminal offence has been explained to me. However, I do not believe that Home Office has fully considered my family circumstances sufficient to appreciate that deporting me to Belgium is likely to cause me and my family more harm than good. I urgently need support to help me cope with my family situation.
11. The Psychologist's report has been prepared after I had a meeting with the Psychologist and reading through papers which were prepared by the Prison - the OAsys report. Through discussion with the Psychologist, I believe she was able to understand my family situation and the root cause of my anger problem. If I do get the opportunity to talk about my situation, I believe it would help me. I do believe also that my anger is an expression of what I feel inside. That is why I am here asking the authorities about the Home Office and the Social Services to help me. I need a job. I need to work
12. If my appeal is not successful and I am to be deported, my absence from my family will cause serious disruption. For example my brother [A] needs me to care for him. Details of his condition were included in my appeal bundle which the Home Office and the Tribunal read before my appeal was heard and the Tribunal allowed my appeal. I do believe the Home Office is doing its job - to kick out foreign nationals with criminal convictions or convictions to represent risk of harm to the British public. The Home Office is already aware of my family situation and I believe it should understand how my deportation could adversely affect my family life and those of my family members. I believe that consideration has not been given to what is likely to happen to my family if I am deported. I do believe that my deportation would cause a rupture to my family life sufficient to violate my human rights and the rights of my family members. I have been punished for my criminal offence with prison sentence. I am not a repeat offender I have not been in any further trouble. I deserve to be given every opportunity to rehabilitate. Preventing me from taking employment whilst my appeal is ongoing is a violation of my human rights.
13. If the Home Office has properly considered all the evidence which is contained in my appeal bundle, it will see that deportation is not the answer to deal with my situation. I believe the answer to my situation is that the authorities should come to my rescue by arranging a package of support including Counselling Therapy. I am in pain and I need help. Making a deportation order against me is like kicking me whilst I am already on the floor in agony. I need a helping hand, not a kick in the head - which is what the Home Office is doing to me and my family.

14. I do not deny that I made a mistake and that I regret my actions. But I have been punished with imprisonment. I should be allowed to rehabilitate and provided with the necessary support to help my rehabilitation. I would expect the Court to be independent and be willing to look at my situation and to ask serious questions about what arrangements have been put in place to help me rehabilitate. I am already here as a European citizen. I believe that this country has the means to help me rehabilitate if it genuinely wishes to do so. Making a deportation order against me as a quick fix which leaves more pains and harm in my family. I do believe that the Home Office should consider the likely impact on each and every member of my family.
15. My family can hardly afford the costs of pursuing my appeal. My father is the only one in the family working and meeting the financial needs of the family. I asked that I am given the opportunity to rehabilitate that the authorities should assist me by putting in place measures which would help me move on from my mistake. It is not helping my situation. If I have been diagnosed with anger management problems, I think the question should be asked as to what leads to the anger in the first place. There is no point discussing managing my anger when the cause of the anger remains unchecked removed.
16. By denying the right to take employment, the Home Office is making worse my situation. At 26 years of age with no disability, I should not be made to feel like an invalid, and outcast.
17. I believe the Home Office may be acting unlawfully by refusing to allow me to take employment as an EU citizen. Even though I have worked before, I am not receiving any financial support from the State even though I made National Insurance Contributions in my previous employment in the UK.
18. By refusing to allow me to take employment, the Home Office is deliberately pushing me into depression as I feel worthless, unproductive and irrelevant in a society where I wish to be long and contribute as a productive member of society.'
29. Of concern in the statement is what appears to be an attempt to blame others for his misfortune. Mr Kamara is the subject of a deportation order as a result of his offending. There is no challenge to the lawfulness of the deportation order or the lawfulness of the respondent's decision not to permit his to work in the United Kingdom. It was accepted by Professor Rees that such decisions are lawful, which is factually correct. The statements also hint of a person asserting their rights as if the same were determinative without accepting the responsibility that goes with being a member of the community of the United Kingdom.
30. Before the First-Tier Tribunal the appellant was cross examined. In relation to his offending First-tier Tribunal Judge Beach in the decision of the 11 June 2019, which although the conclusion was set aside still stand as a record of the evidence Mr Kamara gave to that Tribunal, records:
 - "11. In cross-examination, the appellant said that on the day of the offence he had been to a party. He said that he went to the party with his

friend and friends of his friend. He said that he only knew one of these people well. The appellant agreed that they were asked to leave the party but then said that they were never told to go. He said that he thought that it was because it was overcrowded so they had to leave. The appellant agreed that one of his group had a knife in his backpack. He said that he found out about this knife when they were on the train going to Southend to get the next train back to London. He said that they were coming back from the party. The appellant agreed that the man showed him the knife. He was asked why the man would do this and said that it was not like the man showed him the knife for him to use it. He said that they were talking and he heard the man said that he had a knife in his bag. The appellant said that this was how he knew and that he did not intend to use it. He said that this happened a few minutes after he got on the train.

12. The appellant said that at the time of the offence he was drunk. He said that he had an altercation with the victim then returned to get the knife. The appellant said that he could not remember whether he asked for the knife or whether he just took it. He said that he was drunk at the time. The appellant said that he had drunk half a bottle of brandy from the start of the evening. He said that it was a 1 L bottle that belonged to him and he bought it to share with his friend. He said that he and his friends drank half a litre of brandy between them. The appellant said that he was so drunk that he suffered blackouts in his memory. He said that he could not remember what part his memory failed but that even his friend was telling him to stop. He said that he did not remember the initial attack but that he saw the footage on CCTV and his memory came back. The appellant denied putting the knife behind his back. He said that he was clenching the knife. He agreed that it was hidden and that he remembered someone shouting that he had a knife. The appellant agreed that he changed his clothing after the incident but denied that he was trying to conceal evidence. He said that he took his jacket off because he was hot. The appellant said that the Judge was wrong when he stated that he had undoubtedly tried to conceal himself. He said that he had never tried to hide the evidence. The appellant said that he still maintained that he was not in control of his actions. He said that he was not looking to start a fight and is not a violent person. The appellant said that the victim had a problem with one of his friends. He said that they were talking and that the person said that the victim had been saying bad things about him. The appellant said that this is why he went to speak to the victim. He said that he thought that the victim was going to punch him so he punched the victim first and then the victim punched him so hard he thought that he was going to fall over. He was referred to the Judge's comments which stated that the Judge did not accept that the appellant was not looking for trouble. The appellant said that the Judge was wrong about this.
13. The appellant was referred to the adjudication regarding an assault on a prisoner. He said that he was there but that he did not take part. He said that there were 20 people there and they all got an

adjudication. The appellant was referred to the adjudication regarding a mobile phone. He said that he was struggling with not speaking to his mother and so he got the phone. He said that it was the first time the he had been in prison and he wanted to speak to his mother urgently and so he bought the phone to speak to her. The appellant agreed that he knew that it was against the rules but that he had still done it.

14. The appellant denied being found in possession of an herbal wrap. He said that this was on the second occasion of the phone which was in the TV and that it was not just him. He said that they found the wrap in his cell. The appellant said that he was not on an adjudication for this and never lost any privileges but that the wrap was found on his side. The appellant said that this adjudication took place in October related to the same time as the second phone incident. He said that it was a different date because he wanted a Solicitor and the adjudication had been adjourned.”
31. Witness statements have also been provided by the Mr Kamara’s mother and stepfather confirming the family history, composition, and health issues appertaining to Mr Kamara’s two younger siblings. Similar comments are made regarding Mr Kamara’s inability to work. It is clear these family members clearly support Mr Kamara and object to his deportation from the United Kingdom especially in light of the problems that will be caused to the remaining family members. The statements refer to the view of the family that Mr Kamara will benefit from the support he is likely to receive from the family if he is allowed to stay in the United Kingdom.
32. Two OASys reports have been prepared the first dated the 1 October 2018. The analysis of the offence recorded in section 2.1 of the report is in the following terms:

“Mr Kamara was sentenced to 8 years imprisonment for an offence of GBH (Sec.18). I have had sight of the CPS documents, which states that on the 6.2.15 Mr Kamara and a group of friends boarded a train at Leigh on Sea, where a fight commenced between Mr Kamara, a number of other males and victim, Mr Mbu. The first attack lasted for a few seconds, then the group Mr Kamara was in walked back to another carriage. On CCTV Mr Kamara is then seen walking back into the carriage, where he is seen by a number of witnesses take a wooden handled 7-inch serrated blade out of his rucksack. Mr Kamara was seen punching Mr Mbu, in the company of two others. He then goes back into another carriage, where he goes and gets the knife again, however could not get to Mr Mbu [sic] because people were fighting on the train. Mr Kamara then proceeds to get off the stationary train and re-enters, where he is seen to hold the knife high above his head, with a witness describing it as being with a terrific force. Mr Mbu puts his hand up in a defensive gesture, which resulted in a knife going straight through the centre of Mr Mbu’s hand.

Mr Kamara generally agrees with the version of events as presented by the prosecution and pleaded guilty to this offence.

.....

Mr Kamara stated that the group went to a party where he drunk a quantity of alcohol and he told me in an interview that he was drunk at this time. He then explained that the group were kicked out of the party and he then intended to make his way back home. He explained that the group saw the victim at Benfleet station and I understand that once on the train, two girls who were with Mr Kamara's group went to join the victim in another carriage. Mr Kamara explained that, two individuals left the group following the two girls and returned shortly after, explaining to him that the girls had 'ditched them' for the victim and that the victim had been 'disrespectful'.

Mr Kamara stated that he went to the victims carriage to discuss the situation with the victim and 'calm things down' though he told me that the discussion became heated and resulted in a physical confrontation. Mr Kamara admits punching the victim stating that he was drunk; as he felt the victim was also disrespectful; this altercation was caught on CCTV. Mr Kamara submits that he does not remember much after this point as the anger and alcohol clouded his judgement though he accepts that he subsequently stabbed the victim through the hand with a knife."

33. The impact upon the victim in section 2.5 is recorded as "*the victim received stab wound to the left hand that penetrated the centre of his hand and exited the flesh at the back. I understand that he had to receive surgery on the hand. It is expected that the victim suffered significant psychological harm as a result of being a victim of a stabbing, alongside the physical harm described above.*"
34. At section 2.8 discussing why the incident occurred to the author of the OASys report writes:

"It appears that this offence was triggered by Mr Kamara's group, having their advances, on the two girls in question, rejected. The group harboured umbrage towards the victim, likely as a result of the two girls going to sit with the victim. Mr Kamara states that he also felt that the victim was disrespectful towards him and states that alcohol consumption affected his decision-making. I discussed with him the presence of the knife and he reported that an individual in the group had informed him that he had a knife in his bag when the two members of the group returned from the victims carriage before Mr Kamara went to confront the victim. Mr Kamara denies having any prior knowledge of the weapon before the offence and denies that this was a planned attack or that it was gang related in any way.

It is my assessment that Mr Kamara has on this occasion shown a clear lack of consequential thinking skills. He reports that he is not normally a violent individual and presents at a loss to explain his actions, citing alcohol as a disinhibitor. He was clearly frustrated with this situation and exhibited an extreme form of violence and there is little evidence to dispute this. Therefore it is considered that Mr Kamara responded poorly to a difficult situation failed to realise the seriousness of his actions, demonstrating thinking skills deficits."

35. There is also a second OASys which is dated 19 February 2019. In relation to the adjudications whilst in prison, which Mr Kamara has sought to minimise, the OASys report records four such events being:

26/03/2017 - assault of another prisoner.

- 05/10/2016 - possession of 1 x wrap of herbal substance.
 31/06/16 - possession of mobile phone and charger.
 03/01/16 - possession of mobile phone.

36. In assessing risk of serious harm, section R10.1-6, the author of the OASys report identifies the nature of risk to be risk of physical harm resulting from assault with the use of weapons in addition to the psychological harm that one would experience from being the victim of an attack with a weapon. The effect is assessed to be serious long lasting and could possibly result in death. In relation to when the risk is at its greatest and whether imminent or not, it is found the risk of harm is not imminent because Mr Kamara was at that time in custody although it is found he presents as an impressionable individual and as a result was assessed that should he be subjected to negative influences in custody there is potential for him to resort to risky behaviour. The authors report assessed that the risk is likely to be greatest when Mr Kamara is associated with negative peers who are in possession of a weapon and that should he choose to engage in confrontational situations whilst under the influence of alcohol this would make the risk immediate.
37. The author, when considering circumstances likely to reduce risk, states that should Mr Kamara disassociate with negative peers that would reduce the risk of further offences and that in addition he should be able to address his thought process in regard to violent behaviour and managing his emotions which should significantly reduce the risk of violent offending.
38. At paragraph 10.6 assessing risk the report records:

Risk	Risk in Community	Risk in Custody
Children	Low	Low
Public	High	Low
Known Adult	Low	Low
Staff	Low	Low
Prisoners		Low

39. In relation to existing support/controls at section R 11.12 the author of the report records that Mr Kamara has been assessed as a high risk of harm to the public and low risk in other categories with criminogenic features including lifestyle and associates, drug use and thinking behaviour.
40. At 11.12.2 it is noted that Mr Kamara was getting support in custody from his Offender Supervisor and a mental health worker who is monitoring his emotional well-being, that support from the Probation Service in the community will involve weekly supervision appointments, referrals to agencies who will work with Mr Kamara on risk factors, that Mr Kamara receives a lot of support from his family who visit him regularly in prison, that Mr Kamara will be subject to Licence which will mean conditions could be placed on his Licence which may include noncontact condition and an exclusion zone, and that Mr Kamara will be managed by Lambeth MAPPA.

41. Specific risks are identified as Mr Kamara's use of violence and aggression such that he was not assessed as being suitable for Resolve and therefore will need to undertake one to one work in relation to this in the community, that he required work looking at the negative and impact alcohol has on his behaviour within the community, and that he will need to give thought to whom he spends time with having acknowledged that some of his peers are not prosocial and that he can be influenced requiring work to be undertaken with him around him being assertive.
42. The later report records the details of the offence and offending as set out in the initial report, and records at section 7.5 when identifying lifestyle issues contributing to risk of offending and harm,:

"While Mr Kamara may deny that there are any issues in this area, I would note that he spends the majority of his time 'out with friends' one of whom was present at the offence. He spoke positively of his associates though stated that only one of those with him at the time of the offence was his friend, submitting that he had only met the others in the group on that night. In interview he reported that his friends do not normally get into trouble although accepted that if his friend had introduced him to these new individuals and these individuals were getting into trouble then it was likely that his friend also was. In addition there were reports on the same night as the index offence that the group had been involved in a Robbery. Mr Kamara stated that he had heard that some members of the group had been involved in a fight but he stated that he was at a nearby shop at the time and did not see what had happened. Mr Kamara also reported that he would smoke Cannabis with his friends and therefore it could be considered that they are not wholly positive influences.

It is not considered that Mr Kamara was the leader of the group though it is considered that he escalated the situation being the one whom went to get the knife. In addition he reported that one of the group made him aware of the presence of the knife and did not appear to object to him obtaining and using the weapon, possibly alluding to them being in support of his behaviour. I would assess that Mr Kamara is influenced by his peers however it is difficult to gauge the level of this as this is the only evidence of negative behaviour relating to associates. I would highlight that Mr Kamara has not previously come to the attention of police for antisocial behaviour. Despite this it is concerning that Mr Kamara has made the choice to associate with individuals who carry knives and as a result I would assess that this area is linked to a risk of serious harm and offending behaviour."

43. At section 10.8 referring to whether issues of emotional well-being contributing to the risk of offending and self-harm had been identified it is written:

"Mr Kamara did not disclose any significant issues relating to emotional well-being outside of his current circumstances. In his self-assessment questionnaire we did highlight feeling stressed and depressed though it was clear that this was a consequence of his currently being in custody and the prospect of a custodial sentence. Mr Kamara reported that he is often described as a likeable person and was adamant that the index offence was 'out of character'. He told me that his biological father passed away previously and his mother and stepfather often argue and I would assess that these events would have had an effect on his emotional well-being. He told me he does not like being at home and alluded to

having some difficulties coping. When I investigated this area with Mr Kamara he told me that he believes he can sometimes have a quick temper but does not believe that he has any psychiatric problems.

From his presentation and interview I am inclined to accept his reports, he presented as an anxious though other than this his current issues appear to revolve around the consequences of the offence, namely being in custody. Mr Kamara stated that he was recently put on antidepressants and that he has been seeing the mental health nurse. His low mood appears to be linked to circumstances, which include being in custody and the fact he could be deported."

44. Section 11.10 the author records *"while this is the only evidence of Mr Kamara displaying violent behaviour I have assessed him as having temper control issues as a result of this offence and his own reports. Mr Kamara told me that he thinks that he has anger management issues, stating that he does not have patience for a lot of things that he thinks he has a short temper. I assess that an example of this can be seen within the index offence given that he resorted to physical violent when he thought that the victim was 'disrespectful'. Mr Kamara was open to receiving assistance in this area, though stated that the index offence has opened his eyes to this behaviour and that he stated that he would never behave in this way in the future.*
45. The author records that while there is little evidence of persistent issues in this area he or she would still assess that thinking and behaviour are linked to risk of harm and offending behaviour given the circumstances of the index offence and the escalation of violence. It was noted that the Thinking Skills Programme was not suitable for Mr Kamara whilst he was in custody.
46. In Section 12.8 the author of report records a number of adjudications whilst in prison as recorded above. Although Mr Kamara's evidence appeared to attempt to minimise such further aspects there was nothing to suggest that the incidence as recorded, one of which led to further court appearance, are not as noted in the report. The author does record, in addition, that despite the adjudications the feedback from the prison is that Mr Kamara has a good relationship with the staff and was at that point on enhanced privileges.
47. In relation to the likelihood of serious harm to others; the full risk of serious harm analysis remains as recorded above with high risk to members of the public in the community but low risk in relation to all other specified groups. The Predictor Scores % is recorded as:

	1 year %	2 year %	3 year %
OGRS 3 probability of proven reoffending	19	33	Low
OGP probability of proven nonviolent reoffending	10	18	Low
OVP probability of proven violent type reoffending	11	18	Low

48. There is also within the appellant's bundle a letter from the National Probation Service dated 20 September 2019 written by Mr Kamara's Probation Officer in the following terms:

“I have been asked to provide information regarding what Mr Kamara has done to lower his risk of serious harm to medium and his risk of reoffending. Whilst in custody and in the community Mr Kamara has completed

Counselling and Anger Management

1 to 1 Anger Management in the community

Level 1 in IT, Maths, English and Painting and Decorating”

49. Mr Kamara also relies upon a report prepared by a Tamara Licht of ‘Private Therapy’ a clinic based at Harley Street in London dated 9 October 2019 described as being “Psychological Report for Immigration Case”.

50. It is not clear when the specific direction of the Upper Tribunal was for the instruction of an expert Clinical Psychologist specialising in anger management issues Tamara Licht was chosen. At 1.01 of the report it is written:

“I am Tamara Licht an HCPC accredited Clinical Psychologist and Counselling Psychologist. I work with children, young people and adults medico-legal reports and therapeutic interventions mostly under CBT and psychodynamic principles. I have experience working at IAPT and CAMHS services within the NHS and also provide psychological services in private settings.”

51. The website for the Private Therapy clinic describes Tamara Licht as a highly specialist child and adult psychologist.

52. No issue was taken by Mr Tufan in relation to the expertise of the author of the report and it accepted Psychologists can help people recognize and avoid the triggers that make them angry and can also provide ways to help them manage the inevitable anger that sometimes flares without warning; but it is also not clear why those instructing Tamara Licht to prepare the report appear to have provided her with such limited documentary evidence. Appendix 2 of the report listing documents examined records “OASys Assessment dated on 19 February 2019”. It is not explained why the Psychologist was not provided with copies of the Sentencing Remarks or asked whether she wished to see a copy of the CCTV footage taken in the train carriage of the actual offence. In particular it does not appear a copy of the Error of Law finding of the Upper Tribunal was provided which set out the specific issues it was hoped the report would deal with. Questions also arise in relation to the quality of the instructions given to the expert by Mr Kamara’s solicitors. It was quite clearly stated in the Error of Law finding the type of issues a report was to address yet at section 1.02 Ms Licht writes:

“The case concerns Mr Ishmael Kamara (D.O.B: 10/05/1993) who is currently undergoing an immigration case as a result of a crime he committed in 2015.

I have been instructed to carry out a psychological assessment on Mr Kamara and to provide a report exploring the following:

- a. Provide a psychological assessment of Mr Kamara and to
- b. Comment on any support that Mr Kamara and his family may need to overcome the challenges they face as a family who is raising and living with children with severe disabilities - autism.”

53. In relation to the index offence Ms Licht records at section 3.01:

Mr Kamara is currently taking 150 mg of Sertraline. He indicated he had brief experience with Eye Movement Desensitisation and Reprocessing (EMDR) therapy towards the end of the time he served in prison. He expressed that from the brief course of EMDR he received, some symptoms of emotional distress lessened. However, once out of prison, he had been left without any form of psychological support; thus, he is concerned symptoms of emotional distress have reappeared.

Mr Kamara indicated that when he was approximately 5 years old, he witnessed his father being killed 'in front of' him. Additionally, Mr Kamara's finger, as his father was being killed, was cut (he showed me his index finger which lacks the proximal phalanx bone). This was back home in Sierra Leone. He expressed a feel 'scared all the time' and indicated he 'doesn't want it to happen again' (referring to not wanting anyone close to him to be hurt or in danger). Mr Kamara explained that 'everything recalled, everything came back' (referring to his childhood trauma - his father being killed in front of him and his finger being cut) when he witnessed a friend being stabbed. Mr Kamara also explained that when the stabbing took place he promised himself he would 'never let this happen to me' and that he would 'protect' himself. Furthermore, he indicated that the incident with the knife was fuelled by the thought that he should 'protect' himself given his past childhood trauma. He indicated he is constantly 'scared' for his 'life'."

The Psychologist's opinion set out at Section 4 of the report is in the following terms:

"It is my professional opinion that Mr Kamara meets the criteria for 309.18 Post-traumatic Stress Disorder (F 43.10) as defined by the Diagnostic and Statistical Manual of Mental Disorders Fifth Edition (DSM -V).

In my professional opinion, symptoms associated with the diagnosis and named above and exposure to a scene of conflict (dispute between him and his mates) may have revived traumatic events from his childhood. Individuals with PTSD may be quick-tempered and may even engage in aggressive verbal and/or physical behaviour with little or no provocation (APA, 2013). Furthermore, PTSD is often characterised by a heightened sensitivity to potential threats, including those that are related to the traumatic experience (APA, 2013). Given that Mr Kamara was exposed (during his early childhood) to a scene of crime where blood and sharp object were present (killing his father and resulting in his finger being cut), it is my professional opinion that a scene such as a dispute between him and his mates may be considered a trigger to past trauma and better explain his defensive behaviour in this circumstance.

Additionally, it is my professional opinion that Mr Kamara's current family situation (as described in the interview section of this report) further impacted his past behaviour and continues to have a negative impact at present.

Severe mental health conditions, such as the one that has been diagnosed in Mr Kamara, affect an individual's personal, family, academic and social life. These factors are all interconnected and when well balanced, they contribute to an overall sense of well-being. However, in Mr Kamara's case, his personal (childhood trauma), family (carer's role and dysfunctional family dynamic) and

social (adjusting to a new culture and environment) spheres are and have been for a long time in constant distress; and leading to severe psychological distress.

It is my professional opinion that psychological distress affects the way an individual overcomes the challenges they may face in life. Therefore, in my opinion, Mr Kamara's behaviour, which led him to serve in prison, is to be considered a result of psychological distress. It is also my professional opinion that because Mr Kamara hasn't been formally diagnosed with any mental or physical health conditions, the family and Mr Kamara himself put pressure on him in order to contain the whole family. The aforementioned is unsustainable and, in my professional opinion, nearing a severe mental and physical breaking point for Mr Kamara and his family.

It is my professional opinion that Mr Kamara and his family could do with support from Social Services and other professional bodies who may be able to establish a healthier family dynamic by reallocating the roles of each individual and supporting each family member with their own personal struggles.

PTSD is associated with poor social and family relationships (APA, 2013). Family therapy will also be beneficial in order to establish new and healthier patterns of communication between all family members in favour of preventing future psychological distress. It is my professional opinion that although it is unlikely the family will be able to gain access to such support, it is a valid point to consider is Mr Kamara's conviction and possible deportation is putting the whole family under severe mental and financial pressure. It is my professional opinion that Mr Kamara's family is at breaking point. The aforementioned may have serious repercussions not only on Mr Kamara's mental health but also on his siblings and mother's mental and physical health.

Finally, in addition to Sertraline, it is my professional opinion that Mr Kamara may greatly benefit from more Eye Movement Desensitisation Reprocessing (EMDR) sessions to work through past childhood trauma experience. After symptoms of PTSD lesson, he will be a good candidate for Cognitive Behaviour Therapy, and symptoms related to anxiety and depression."

54. Having undertaken an assessment on the basis of the limited documentary evidence and interview the psychologist assesses risk at 4.03 in the following terms:

"In my professional opinion, given that Mr Kamara hasn't been formally diagnosed with any mental or physical health conditions, the family and Mr Kamara himself put pressure on him in order to contain the whole family. The aforementioned is unsustainable and, in my professional opinion, nearing a severe mental and physical breaking point for Mr Kamara and his family.

It is also my professional opinion that the risk of presenting suicidal thoughts is high given the degree and severity of symptoms associated with PTSD presentation. Furthermore, literature suggests that suicidal behaviour may be present in individuals with PTSD (APA, 2013).

Major depressive episodes and severe anxiety disorder may also emerge if symptoms related to PTSD are not urgently treated. The aforementioned will result in an increase of suicidal risk."

55. The report raises issues never previously considered in relation to this appeal and matters that have to be considered as part of the evidence as a whole. Mr Kamara in his earlier statement refers to support for his brothers within the family being shared, with his stepfather, and not falling upon his shoulders solely.
56. The psychologist's assessment that Mr Kamara's actions may have been 'defensive' as a result of his PTSD contradict the clear aggressive proactive nature of his actions on the train, being the perpetrator of the initial violence and returning to obtain the knife to prolong the attack. There was no evidence of any direct threat to Mr Kamara that warranted such action.

Discussion

57. Had this been a domestic deportation there is a strong possibility Mr Kamara would have been deported from the United Kingdom as a result of the serious nature of his offence and the sentence received. This is, however, the deportation of an EEA national requiring additional consideration of the Immigration (EEA) Regulations 2016 ('the 2016 Regulations').
58. Regulation 27 is the relevant provision which concerns decisions taken on grounds of public policy, public security and public health

'27.- (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 right of permanent residence under regulation 15 except on serious grounds of public policy and 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 in the best interests of the person concerned, 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(17).

(5) The public policy and public security requirements of the United Kingdom include restricting rights otherwise conferred by these Regulations in order to protect the fundamental interests of society, and where a relevant decision is taken on grounds of public policy or public security it must also 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 must represent a genuine, present and sufficiently serious threat affecting one of the

fundamental interests of society, taking into account past conduct of the person and that the threat does not need to be imminent;

(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;

(f) the decision may be taken on preventative grounds, even in the absence of a previous criminal conviction, provided the grounds are specific to the person.

(6) Before taking a relevant decision on the grounds of public policy and public security in relation to a person ("P") 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 P, P's length of residence in the United Kingdom, P's social and cultural integration into the United Kingdom and the extent of P's links with P's country of origin.

(7) In the case of a relevant decision taken on grounds of public health –

(a) a disease that does not have epidemic potential as defined by the relevant instruments of the World Health Organisation or is not a disease listed in Schedule 1 to the Health Protection (Notification) Regulations 2010(18); or

(b) if the person concerned is in the United Kingdom, any disease occurring after the three-month period beginning on the date on which the person arrived in the United Kingdom,

does not constitute grounds for the decision.

(8) A court or tribunal considering whether the requirements of this regulation are met must (in particular) have regard to the considerations contained in Schedule 1 (considerations of public policy, public security and the fundamental interests of society etc.).'

59. Schedule 1 of the 2016 Regulations reads:

'SCHEDULE 1 CONSIDERATIONS OF PUBLIC POLICY, PUBLIC SECURITY AND THE FUNDAMENTAL INTERESTS OF SOCIETY ETC.

Considerations of public policy and public security

1. The EU Treaties do not impose a uniform scale of public policy or public security values: member States enjoy considerable discretion, acting within the parameters set by the EU Treaties, applied where relevant by the EEA agreement, to define their own standards of public policy and public security, for purposes tailored to their individual contexts, from time to time.

Application of paragraph 1 to the United Kingdom

2. An EEA national or the family member of an EEA national having extensive familial and societal links with persons of the same nationality or language does not amount to integration in the United Kingdom; a significant degree of wider cultural and societal integration must be present before a person may be regarded as integrated in the United Kingdom.

3. Where an EEA national or the family member of an EEA national has received a custodial sentence, or is a persistent offender, the longer the sentence, or the more numerous the convictions, the greater the likelihood that the individual's continued presence in the United Kingdom represents a genuine, present and sufficiently serious threat affecting of the fundamental interests of society.

4. Little weight is to be attached to the integration of an EEA national or the family member of an EEA national within the United Kingdom if the alleged integrating links were formed at or around the same time as –

- (a) the commission of a criminal offence;
- (b) an act otherwise affecting the fundamental interests of society;
- (c) the EEA national or family member of an EEA national was in custody.

5. The removal from the United Kingdom of an EEA national or the family member of an EEA national who is able to provide substantive evidence of not demonstrating a threat (for example, through demonstrating that the EEA national or the family member of an EEA national has successfully reformed or rehabilitated) is less likely to be proportionate.

6. It is consistent with public policy and public security requirements in the United Kingdom that EEA decisions may be taken in order to refuse, terminate or withdraw any right otherwise conferred by these Regulations in the case of abuse of rights or fraud, including –

- (a) entering, attempting to enter or assisting another person to enter or to attempt to enter, a marriage, civil partnership or durable partnership of convenience; or
- (b) fraudulently obtaining or attempting to obtain, or assisting another to obtain or to attempt to obtain, a right to reside under these Regulations.

The fundamental interests of society

7. For the purposes of these Regulations, the fundamental interests of society in the United Kingdom include –

- (a) preventing unlawful immigration and abuse of the immigration laws, and maintaining the integrity and effectiveness of the immigration control system (including under these Regulations) and of the Common Travel Area;
- (b) maintaining public order;
- (c) preventing social harm;
- (d) preventing the evasion of taxes and duties;
- (e) protecting public services;
- (f) excluding or removing an EEA national or family member of an EEA national with a conviction (including where the conduct of that person is likely to cause, or has in fact caused, public offence) and maintaining public confidence in the ability of the relevant authorities to take such action;

- (g) tackling offences likely to cause harm to society where an immediate or direct victim may be difficult to identify but where there is wider societal harm (such as offences related to the misuse of drugs or crime with a cross-border dimension as mentioned in Article 83(1) of the Treaty on the Functioning of the European Union);
- (h) combating the effects of persistent offending (particularly in relation to offences, which if taken in isolation, may otherwise be unlikely to meet the requirements of regulation 27);
- (i) protecting the rights and freedoms of others, particularly from exploitation and trafficking;
- (j) protecting the public;
- (k) acting in the best interests of a child (including where doing so entails refusing a child admission to the United Kingdom, or otherwise taking an EEA decision against a child);
- (l) countering terrorism and extremism and protecting shared values.

60. The starting point is to assess the level of protection to which Mr Kamara is entitled as an EEA national. It is not disputed that Mr Kamara failed to establish an entitlement to anything other than the lower level of protection namely that the Secretary of State is required to show that the person's removal is justified on the grounds of public policy, public security or public health in accordance with regulation 27. Mr Kamara does not have a permanent right of residence despite his time in the UK.
61. The 2016 Regulations, Schedule 1, paragraph 3, state that where an EEA national/family member has received a custodial sentence or is a persistent offender, the longer the sentence, or the more numerous the convictions, the greater the likelihood that the individual's continued presence in the UK represents a genuine, present and sufficiently serious threat affecting the fundamental interests of society.
62. The public policy ground for removal is an exception to the fundamental principle of the free exercise of EU rights and, as such, has to be construed restrictively. In R v Bouchereau 1978 QB 732 (ECJ) 760 it was said that the presence or conduct of the individual should constitute a genuine and sufficiently serious threat to public policy.
63. It is not in dispute that the basis of the decision is exclusively on the personal conduct of Mr Kamara. Mr Tufan referred to R v Bouchereau (Case C-30/77) in which the Advocate General agreed that in exceptional cases, where the personal conduct of an alien had caused deep public revulsion, public policy required his removal. There was an element of pragmatism in Bouchereau in the recognition of the right to deport those who had committed the most heinous of crimes, which was at odds with the principles of the Citizens Directive. The Court of Appeal in Secretary of the State for the Home Department v Robinson (Jamaica) [2018] EWCA Civ 85 decided that Bouchereau continued to bind the courts of this country albeit it was confined to the sort of case where the facts were very extreme as one was looking for a

threat to the requirements of public policy caused simply by past conduct which has caused deep public revulsion.

64. An EEA national may also be expelled as a result of the decision taken on preventative grounds provided the grounds are specific to the person. Although Mr Kamara has one conviction clearly he has the propensity to offend further if a similar situation arises. It is unfortunate knife crime is not a rarity with daily reports of individuals carrying knives and stabbed in London and elsewhere. Indeed by September 2019 there had been over 120 deaths as a result of knife -related acts of violence in the capital. A figure that appears to be increasing year-on-year. The preventative and public revulsion elements carry some weight on the facts of this case, albeit neither is determinative on its own.
65. An important question this appeal is whether there is a real risk of a repeat of conduct that threatens the fundamental interests. Any finding that there is such a threat had to be based on an assessment of the personal conduct Mr Kamara, taking into consideration the reasons for the deportation decision and the factors on which that decision was based, particularly the nature and gravity of the crimes or acts, the degree of his individual involvement in them, whether there were any grounds for excluding criminal liability, and whether or not he has been convicted.
66. Mr Kamara seeks to persuade the Upper Tribunal there will be no such repeat in the future. The difficulty for Mr Kamara is that the evidence he seeks to rely upon does not establish this is so. Mr Kamara admits he has a problem with his temper and is clearly a person who will resort to serious and possibly fatal acts of violence if he wishes to do so. The reason behind his failure to control his temper and his general presentation may perhaps have been explained for the first time by the psychologist although in the OASys report there is no record of Mr Kamara raising such issues and instead provided another explanation as recorded above. What is also missing from the evidence is any indication as to the success or otherwise of the anger management and other courses undertaken with the Probation Services. The reference in the letter only being to the courses having been completed.
67. Having considered all evidence relevant to this aspect I find Mr Kamara represents a present threat by reason of a propensity to re-offend or an unacceptably high risk of re-offending. It cannot be found Mr Kamara has not offended since the index offence as noted by the adjudications received in prison and his further conviction at the Norfolk Magistrates Court on 8 June 2016. It is again clear that if it suits his intentions and/or desires Mr Kamara is willing to reoffend. The adjudications referred to in the OASys report specifically refer to a further act of violence on 23 March 2017 as noted above.
68. It was accepted by Professor Rees that the evidence provided did not specifically address the issues referred to in the Error of Law finding but that no further report could be obtained as a result of a further sum of money being demanded for the same. Mr Kamara's stepfather in his statement refers to his inability to provide further funds meaning the evidence that has been provided is the best that we have.

69. I find it has been established on the evidence that whilst he is avoiding his peer groups and situations similar to those that led to his offending at the present time, which may include substance abuse, alcohol, and situations of conflict, which is understandable whilst Mr Kamara is subject to licence conditions and an order for his deportation from the United Kingdom, I find the evidence supports a finding that Mr Kamara presents a real and credible risk of reoffending in the future as a result of an act of violence. The assessment of real risk is 'High' in the OASys report and the percentage probability of reoffending also support such a finding. I find the personal conduct of Mr Kamara represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, taking into account his past conduct. Such threat does not need to be imminent to satisfy this requirement.
70. It was submitted on Mr Kamara's behalf that it is necessary in addition to consider the proportionality of Mr Kamara's deportation to Belgium.
71. Mr Kamara was born in Sierra Leone on 10 May 1993 where he completed his secondary school and passed all examinations. In the OASys it is stated he had been in the United Kingdom for about 4 years. It is known from his own evidence that he entered the United Kingdom in December 2011. Mr Kamara told the interviewing officer he had lived in Belgium for 3 years meaning that must have been from approximately 2008 to 2011. Although Mr Kamara claims that he would not be able to survive in Belgium having no knowledge of the language or the way of life, he clearly lived with his family and would have had some knowledge albeit within the family context. It was also not made out that Belgium as an advanced European country is substantially different in the manner in which it functions from the UK even if there are language or historical differences, such that Mr Kamara will not be able to adapt.
72. In relation to language issues, the de facto language of Sierra Leone is English although a number of other languages are spoken. The official languages of Belgium are Dutch, French and German although English is also spoken. Mr Kamara fails to make out that he will not be able to benefit from the assistance of interpreters used by the authorities in Belgium until his own language skills improve when seeking to access public services.
73. Case law relevant to the prospects of rehabilitation includes Secretary of State for the Home Department v Arturas Dumliauskas, Lukasz Wozniak and ME (Netherlands) [2015] EWCA Civ 145 and MC (Essa principles recast) Portugal [2015] UKUT 00520 (IAC) it was held that:
- (i) *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;*
 - (ii) *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);*
 - (iii) *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]);

- (iv) 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]);*
- (v) 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;*
- (vi) 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]);*
- (vii) Such prospects are to be taken into account even if not raised by the offender (Dumliauskas [52]);*
- (viii) 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]);*
- (ix) 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]);*
- (x) 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]).*

74. Consideration of the prospects of rehabilitation as between the UK and Belgium and awareness of the interest 'of the European Union in general have been factored into this decision.
75. On the evidence provided I find Mr Kamara's rehabilitation is at this time incomplete or uncertain in the United Kingdom.
76. In SSHD v Arturas Dumliauskas, Lukasz Wozniak and ME (Netherlands) [2015] EWCA Civ 145 Sir Stanley Burnton found at [54-55]:

"54. Lastly, in agreement with what was said by the Upper Tribunal in *Vasconcelos*, I do not consider that in the case of an offender with no permanent right of residence substantial weight should be given to rehabilitation. I appreciate that all Member States have an interest in reducing criminality, and that deportation merely exports the

offender, leaving him free to offend elsewhere. However, the whole point of deportation is to remove from this country someone whose offending renders him a risk to the public. The Directive recognises that the more serious the risk of reoffending, and the offences that he may commit, the greater the right to interfere with the right of residence. Article 28.3 requires the most serious risk, i.e. "imperative grounds of public security", if a Union citizen has resided in the host Member State for the previous 10 years. Such grounds will normally indicate a greater risk of offending in the country of nationality or elsewhere in the Union. In other words, the greater the risk of reoffending, the greater the right to deport.

55. Furthermore, as I mentioned above, a deported offender will not normally have committed an offence within the State of his nationality. There is a real risk of his reoffending, since otherwise the power to deport does not arise. Nonetheless, he will not normally have access to a probation officer or the equivalent. That must have been obvious to the European Parliament and to the Commission when they adopted the Directive. For the lack of such support to preclude deportation is difficult to reconcile with the express power to deport. In my judgment, it should not, in general, do so."
77. Having considered the 'Essa principles' as revised by the Court of Appeal in Dumliauskas it is not open to a Tribunal re-making the decision in an appeal concerning an EEA national who has not acquired permanent residence to attach substantial weight to the prospects of his rehabilitation.
78. In the current case a number of factors weigh against Mr Kamara in assessing the proportionality of the deportation decision. In addition to his having been found to pose a genuine, present and sufficiently serious threat to the fundamental interests of society, he has not been exercising Treaty rights for five years; although he has significant family relationships with his mother, step father and sibling in the UK, I find his alleged role in the family has been exaggerated and any family ties he has did not prevent him from offending in the past and it is not made out would prevent the risk of him offending in the future. Mr Kamara accepts he has anger management issues and alcohol featured in the offence for which he was convicted. It is also the case that Mr Kamara committed further offences for which he received adjudications whilst in prison. The fact Mr Kamara was aware he had an anger management issue yet appears to have done nothing to resolve it voluntarily prior to the commission of the index offence it is noted. In his latest witness statement Mr Kamara claims to have no history of aggressive criminal behaviour to the level which led to his conviction which leaves open the question of earlier aggressive behaviour for which he was not convicted. The picture painted by the factual analysis does not indicate this would be the first time Mr Kamara is likely to have lost his temper or resorted to violence although it is accepted it is the first time he used a knife.
79. The factors weighing in favour of the Mr Kamara include the fact that he has been in the UK over 8 years; that he has family here and that in the time he has

been here he has integrated into UK society in a number of ways, and the lack of continuing links with Belgium.

80. What is totally absent from the evidence prepared by Mr Kamara, or his representatives is any analysis of the facilities available in Belgium to which he is entitled to access as a citizen of that country to assist in rehabilitation. As noted in MC 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]). It is not made out the facilities available in Belgium will be markedly different from those in the United Kingdom. It is not made out Mr Kamara will not be able to re-establish himself within Belgium. Although it is accepted the same will be difficult it is not established such problems make the decision disproportionate, in all the circumstances. Lack of ties are not determinative in preventing deportation as otherwise those with no ties can ever be deported.
81. I find in this appeal the factor of rehabilitation is one which neither significantly adds to the factors to be counted in Mr Kamara's favour or alters the overall balance of considerations. Whatever the state of the relative prospects of his rehabilitation in the UK as compared to Belgium such a factor cannot amount in his case to one which carries substantial weight.
82. Considering the overall family it is interesting to note the Psychologist was specifically instructed to consider support that Mr Kamara and his family may need to overcome the challenges they face as a family raising and living with children with severe disabilities. This was not an issue in the case per se and it is not made out that if Mr Kamara is deported Social Services or other statutory bodies will be unable to assist as the Psychologist suggests.
83. It is accepted Mr Kamara's mother experienced violence herself in Belgium, but she now lives in the UK and even though she may have fears as a mother for her son being returned to Belgium that does not arguably alter the proportionality assessment.
84. As an observation, it is not made out the family could not return to Belgium if they wished to do so and seek help for any physical or psychological needs there.
85. The family in the United Kingdom continued to function at the level they do whilst Mr Kamara was in prison. Whilst he may provide an extra pair of hands and support whilst he is at home it was not made out the effect of removing Mr Kamara from the United Kingdom would result in unjustifiably harsh consequences for this family unit such as to tip the proportionality assessment in his favour.
86. Whilst family ties and responsibilities, accommodation, education, training, employment, active membership of a community are relevant factors, and have been taken into account, they are not determinative in terms of the balancing exercise in this appeal. Mr Kamara committed a very serious offence for which he received a long prison sentence. He fails to counter the argument, when weighing all the factors together, that the Secretary of State's decision to deport

him is not contrary to his right of free movement. The Secretary of State has established on the evidence considered in the round that deportation will be a proportionate interference with Mr Kamara's Treaty rights. Mr Kamara is a present threat and is likely to remain so in the future. Prospects of rehabilitation have not been shown to constitute a significant factor in the balance.

- 87. In relation to Article 8 ECHR, whilst I accept proportionality under the EEA Regulations relates the proportionality of an interference with Treaty rights which is separate from the factors applicable under Article 8, Mr Kamara fails to make out there is any material basis not factored into the EEA proportionality assessment that is beneficial to him pursuant to Article 8 ECHR.
- 88. In light of the above, this appeal is dismissed.

Decision

- 89. **I remake the decision as follows. This appeal is dismissed.**

Anonymity.

- 90. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 27 December 2019