Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00196/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 28 August 2019	**On 5 September 2019**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

SANDRO RAFAEL PIRES DOS SANTOS CASSAMA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Jaja of Counsel, instructed by UK Migration Lawyers Ltd
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is citizen of Portugal. His date of birth is 30 May 1997.

2. On 1 March 2018 the Secretary of State made a deportation order against the Appellant pursuant to Regulation 23(6)(b) of the Immigration (European Economic Area) Regulations 2016 ("the 2016 Regulations"). On 22 May 2017 (8 days before his 20th birthday) the Appellant was sentenced to 30 months imprisonment for the following offences; possession of cocaine with intent to supply, possession of heroin with intent to supply, possession of an offensive weapon and assaulting a police

officer. The offences were committed on 30 March 2017. The Appellant was released on licence on 5 July 2018. However, he remained in immigration detention until 10 October 2018. His licence expires on 5 October 2019.

3. The Appellant appealed against the deportation order on the grounds that the decision breached EU law. His appeal came before FtT Judge Gurung-Thapa on 5 December 2018. The judge allowed the Appellant's appeal under the 2016 Regulations. The Secretary of State was granted permission to appeal by Upper Tribunal Judge Perkins on 6 March 2019. Thus, the matter came before me. I set aside the decision of the FTT having found a material error of law. I found that the FTT did not err in respect of the finding that the Appellant had permanent residence and the level of protection that this entitles him to under the 2016 Regulation. However, I found that there was a material error when assessing the risk posed by the Appellant. The error of law decision reads as follows:-

> "22. The Secretary of State's application is that when assessing risk the judge did not take into account material matters and the decision is inadequately reasoned. I had some sympathy with Ms Jaja's helpful submissions. The judge properly directed herself. It is not clear why the Secretary of State failed to obtain a risk assessment or why evidence of some importance was served on the day of the hearing. However, in my view, the judge did not take into account the nature of the offences that were committed by the Appellant and did not consider risk in the light of the Appellant's criminal record. There had, on the face of it, been an escalation in seriousness of the offences and I do not accept that the judge adequately engaged with this point at [55]. The judge found that the Appellant was genuinely remorseful and that he was motivated to avoid further offending. She accepted the Appellant's evidence unquestioningly. She was entitled to do so; however, she erred because she did not give adequate reasons. There was no independent supporting evidence of remorse. Whilst the judge was entitled to attach weight to the sentencing remarks of the judge about the Appellant having been under pressure, when one considers remorse in the context of the Appellant's criminality including the three adjudications against him (which he accepted), it is difficult to understand from the judge's decision why she found that he was remorseful and motivated. Although the Appellant may have taken steps to start rehabilitative work whilst in custody, the evidential value of this was limited because he did not undergo rehabilitative work relating to offending whilst in prison. The evidence of "rehabilitative work" referred to by the judge at [71] can only relate to other courses that the Appellant completed whilst in custody which were not directly related to risk or criminality.
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> 23. The judge attached weight to the Appellant being supervised whilst on licence and that he would have the support of his mother and elder brother. Whilst she was entitled to attach weight to their evidence about the impact of prison on the family, it is not clear from the decision how this materially undermined the presentation of risk, in the light of the failure of his family to give him effective support in the past. The Appellant may be supervised whilst on licence which expires on 5 October 2019; however, he had been released only six weeks before the hearing. It is difficult to see how any inference as to risk could be gleaned from this. I am concerned

that the judge took into account immaterial matters; namely, the prospect of rehabilitation in Portugal and the length of time the Appellant has been here. This may be material when assessing proportionality, but not when assessing risk.

24. Whilst the Secretary of State had produced evidence (the CID notes relating to incidents that had occurred during the Appellant's time in custody) on the day of the hearing, there was no application for an adjournment. Whilst the judge was entitled to accept the Appellant's evidence on the matters disclosed in this evidence, it was incumbent on the judge to give adequate reasons for doing so. The reason given by the judge is "there was a ring of truth in the Appellant's explanation". This is not adequate, in my view."

4. I directed that the Respondent serve and file a probation report/OASys assessment relating to this Appellant not later than 21 days before the hearing. Whilst acknowledging that the burden of proof is on the Respondent, considering that he was still on licence and under supervision of a probation officer, I decided that it was reasonable to expect him to produce an up-to-date assessment of risk and directed that he did so no later than 21 days before the hearing.

The Law

5. Regulation 27 of the 2016 Regulations reads as follows:-

'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.)[1].'

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1 **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—

6. In *SSHD v Straszewski* [2015] EWCA Civ 1245 the court of appeal considered factors to be taken into account when deciding whether the removal of an EEA national who has acquired a permanent right of residence is justified on serious grounds of public policy or public security. The court considered deportation in the context of the 2006 EEA Regulations and said as follows:

> "12. One important purpose of the Citizenship Directive was to protect and support the Treaty right of free movement of nationals of Member States and, by extension, nationals of other EEA states. The origin and purpose of the Regulations are, therefore, both fundamentally different from those of section 32 of the UK Borders Act, which is directed to removing from this country aliens who have no right to be here other than in accordance with leave to remain granted by the Secretary of State. Leaving aside whatever protection against removal the European Convention on Human Rights may afford them, their position in law is inherently less secure than that of EEA nationals who are entitled to exercise Treaty rights. In a case where the removal of an EEA national would prima facie interfere with the exercise of his Treaty rights it is for the member state to justify its action. It is for this reason that I am unable to accept Ms Chan's submission that in a case of the present kind the burden of showing that the decision is not in accordance with the law lies on the person who is to be deported.
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> 13. Given the fundamental difference between the position of an alien and that of an EEA national, one would expect that interference with the permanent right

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(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.

of residence would be subject to more stringent restrictions than those which govern the deportation of nationals of other states. Moreover, since the right of free movement is regarded as a fundamental aspect of the Union, it is not surprising that the Court of Justice has held that exceptions to that right based on public policy are to be construed restrictively: see, for example *Van Duyn v Home Office* (Case 41/71) [1975] 1 C.M.L.R. 1 and *Bonsignore v Oberstadtdirektor der Stadt Köln* (Case 67/74) [1975] 1 C.M.L.R. 472.

14. Regulation 21(5)(b) and (d) provide that a decision to remove an EEA national who enjoys a permanent right of residence must be based exclusively on the personal conduct of the person concerned and that matters that do not directly relate to the particular case or which relate to considerations of general prevention do not justify a decision to remove him. On the face of it, therefore, deterrence, in the sense of measures designed to deter others from committing similar offences, has of itself no part to play in a decision to remove the individual offender. Similarly, it is difficult to see how a desire to reflect public revulsion at the particular offence can properly have any part to play, save, perhaps, in exceptionally serious cases. As far as deterrence is concerned, the CJEU has held as much in *Bonsignore v Oberstadtdirektor der Stadt Köln*.

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22. Our attention was not drawn to any case in which the CJEU has considered the kind of conduct that is likely to be sufficiently serious to justify deportation of an EEA national who enjoys a permanent right of residence but has not lived in the member state concerned for a period of at least ten years. Ms Chan did, however, draw our attention to the decision in *I v Oberbürgermeisterin der Stadt Remscheid*, in which the claimant had been convicted of multiple offences of sexual abuse, sexual coercion and rape of a 14 year old girl in respect of which he had been sentenced to 7½ years' imprisonment. The CJEU was asked to decide whether the expression "imperative grounds of public security" referred only to conduct which threatened the security of the state itself, its population and the survival of its institutions or was broader in scope.

23. In giving its judgment the court emphasised that member states retain the freedom to determine the requirements of public policy and public security in accordance with their national needs, but that the requirements of the Directive must still be interpreted strictly. Criminal offences which constitute a particularly serious threat to one of the fundamental interests of society or which pose a direct threat to the calm and physical security of the population may fall within the concept of "imperative public security", as long as the manner in which such offences were committed discloses particularly serious characteristics. However, the court also emphasised that even then deportation will not be justified unless the conduct of the person concerned represents a genuine, present threat affecting one of the fundamental interests of society, which normally implies that he has a propensity to act in the same way in the future (see paragraphs 17-30).

24. I do not find that case to be of great assistance in determining whether in any individual case there are "serious" grounds of public policy or public security sufficient to justify deportation. It is clear, as the court confirmed, that the expression "imperative grounds of public security" creates a considerably stricter test than merely " serious" grounds, but since the application of the test is primarily for the member state concerned, which must take into account social

> conditions as well as the various factors to which the Directive itself refers, the question is likely to turn to a large extent on the particular facts of the case. It would therefore be unwise, in my view, to attempt to lay down guidelines. In the end, the Secretary of State must give effect to the Regulations which themselves must be interpreted against the background of the right of free movement and the need to ensure that derogations from it are construed strictly. In that context it is worth noting that even in a case where it is considered that removal is prima facie justified on imperative grounds of public security, the decision-maker must consider, among other things, whether the offender has a propensity to re-offend in a similar way (judgment, paragraph 30)."

7. The burden of proving that a person represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society rests on the Secretary of State. The standard of proof is the balance of probabilities: *Arranz (EEA Regulations – deportation – test) [2017] UKUT 00294 (IAC)*

The Evidence

8. By way of letter dated 18 April 2019 the Appellant's solicitors submitted an OASys report dated 5 December 2018. It was completed on 9 November 2018. The solicitors refer to a risk assessment having been carried out in May 2019. No assessment was produced by either party. I expressed my concern about the absence of such evidence. I was told by both representatives that efforts had been made to obtain further evidence from the probation service. These efforts had been to no avail. I was not given any further details of the attempts made by either party to obtain up to date evidence. Neither party asked for an adjournment to obtain further evidence. Ms Jaja could not explain to me why the Appellant had not made a further witness statement which may have assisted me to make an up to date assessment of risk. The Appellant attended the hearing with his mother. He relied on the evidence that was before the FTT and in addition the OASys assessment. The matter proceeded by way of submissions only.

The OASys report

9. The Appellant was subject to an immediate sentence of imprisonment. There was no pre-sentence report (PSR) as far as I am aware before the sentencing judge. The OASys report was prepared after the Appellant's release. He had returned home and was living with his family. He was supported by his mother. He was unemployed because of his immigration status. He was released on licence and was to complete "offence focused work" during supervision appointments. He was to be referred to a relevant agency by his offender manager to reduce the risk. He showed a willingness to participate in a "Thinking Skills" programme. At R11.12 it is stated that the Appellant is "motivated to engage, and has shown willingness to partake in the Thinking Skills programme, for which a referral has been made. He has accepted full responsibility for the offence and was able to identify what led him to committing the offence."

10. The author of the report describes the circumstances of the offences. The Appellant is said to have violently pushed a police officer having been told that he would be searched for drugs. He was seen to throw a knife into the road. Whist in police custody he swallowed drugs. The caused him to have a heart attack and to be taken to hospital. He was arrested with another male who was also charged with drug offences. The Appellant accepted responsibility for the offences. He accounted for his criminal saying that it was as a result of his drug habit. There is a previous conviction for possession of a knife. According to the author of the reports this represented a pattern of offending and that the offences represented a propensity to carry weapons. There was an escalation in seriousness of the offending. Educational and financial issues were linked with offending as were lifestyle and associates. Drug use was also linked as was thinking and behaviour and attitudes. The Appellant presented a medium risk of reoffending and a medium risk of harm to the public (and staff). The risk of harm to members of the public, himself and police officers is not imminent. The risks will increase if he returns to cannabis use, comes into contact with the police and associates with pro-criminal peers. The risk will be reduced if he is able to involve himself with pro-social activities such as training courses and if he were to gain employment and if he engages during supervision sessions.

11. Whilst there is no suggestion that the Appellant has failed to comply with the conditions of his licence, there was no further evidence from the probation service indicating the level of compliance and whether he has completed any courses and significantly no up to date assessment of risk. The Appellant is still on licence.

The Evidence before the FTT

12. The Appellant relied on the bundle before the FTT. This bundle comprises 253 pages and includes the Appellant's witness statement of the 18 July 2018. It is his evidence that he came here 9 years ago. He attended Newham College where he obtained some educational certificates, copies of which he produced. He explained his criminality by the saying that he had poor associates. He regretted his actions. He said that he was frightened of repercussions if he had refused to deal in drugs. He undertook several courses in prison and has gained further qualifications.

13. The Appellant's mother, [SS], also made a witness statement. It is undated. Her evidence is that she has been here for 8 years and works as a cleaner. Prior to the Appellant's incarceration he was living in the family home. There was an undated witness statement from [FD], the Appellant's brother. His evidence is that the Appellant has matured and changed. He has rehabilitated and "firmly resolved never to associate with the wrong people again". He has learnt lessons from the past. There is a witness statement from the Appellant's aunt, [NS], dated 17 July 2018. Her evidence is scant.

14. The Appellant, his mother and brother gave oral evidence before the FTT. The salient parts of the evidence are that the Appellant had "applied to be referred to the Thinking Skills Programme" and was not accepted because he was released. He completed IT courses in custody. He had enrolled on a City and Guilds Course

which started at the end of January 2019. He told the FTT that he was a reformed character. Much of the Appellant's mother's evidence related to her status here as a worker. The evidence in respect of the Appellant's partner [AS], was not accepted by the FTT. It was not accepted that he was in a relationship. There was no challenge to this finding and no further evidence adduced before me on this issue.

Conclusions

15. Whilst I do not criticise the representatives who appeared before me, the Tribunal has not been assisted by either party in this case. There was no up to date evidence of risk. However, the OASys report put me in a better position than the FTT to evaluate risk. I heard full submissions from both parties. I shall engage with them whilst giving my reasons for concluding that in this case, having conducted a fact sensitive assessment of the evidence before me, the Respondent has not established the Appellant's conduct represents a genuine, present and serious threat affecting one of the fundamental interest of society and that there are no serious grounds of public policy of public security justifying the deportation of the Appellant.

16. The offences committed by the Appellant are undoubtedly serious. He supplied class A drugs and assaulted a Police Officer in the execution of duty. Mr Tufan did not try to persuade me that the this was a most exceptional case so that past conduct alone may suffice. The Respondent's case was advanced on the basis that the Appellant posed a future risk. Mr Tufan said that he is a persistent offender. He submitted that whilst for the purposes of the 2016 Regulations risk of re-offending does not have to be imminent, in Mr Tufan's view there was probably an imminent risk in this case. Mr Tufan relied on the risk assessment in the OASys report and addressed me in some detail in respect of Schedule 1.

17. The thread going through the evidence of the Appellant and family members is that the sentence of imprisonment has served as a salutary experience for the Appellant. This is not surprising in my view and supported by what the sentencing judge said. The Appellant suffered heart failure following his arrest, having swallowed a quantity of drugs. The sentencing judge stated that the Appellant nearly died as a result. He accepted that the Appellant was under extreme pressure (to sell drugs), albeit this did not amount to an offence of duress. He accepted that the Appellant who was arrested with another played a lesser role. In respect of the supply of drugs, the starting point was a custodial sentence of three years. He was given two years, having been given credit for pleading guilty. In the light of a previous conviction for possession of a blade the Appellant was given a mandatory 6- month sentence. He was given a concurrent 3- month sentence for assaulting a police officer. Whilst the Appellant has a previous conviction in 2015 for possession of a blade, I am not satisfied that he is a persistent offender. He was not sentenced on this basis of him being a persistent offender. From the sentencing comments, it is clear that the judge did not consider him to be a persistent offender. There is no reason for me to go behind the comments of the sentencing judge. Mr Tufan did not ask me to do so.

18. Ms Jaja drew my attention to certificates in the Appellant's bundle which establish that the Appellant undertook courses whilst in custody. These were before the FTT. Contrary to the findings of the FTT, they do not amount to rehabilitative work; however, they do establish that the Appellant kept himself busy in prison and successfully undertook courses. In some, he achieved excellent results. This is undoubtedly capable of helping him to find work in the future. It supports that the Appellant is motivated to find work.

19. Whilst there was no evidence that the Appellant has completed the Thinking Skills programme, there is a certificate in the Appellant's bundle (p.36) to which I was not directed at the error of law hearing and which the FTT did not refer to. It is a "certificate of completion" of a safeguarding course which comprised four units. One unit is described as "coping with change" and another "managing anger, aggression and stress". Whilst Mr Tufan correctly pointed out that there was no evidence about what the course entailed to assess its significance, it is capable of supporting that the Appellant is motivated to change. I consider the evidence in the round.

20. At the error of law hearing Ms Jaja told me that the evidence was that the Appellant had signed up on the Thinking Skills programme whilst in prison but was released before he was able to start. From the OASys report it seems that he was required to complete the course after his release and while on licence. Regrettably there was no evidence about this before me. However, there is no suggestion that the Appellant has failed to comply with the terms of licence or that he has failed to cooperate with the probation service since his release. He is still on licence and has not been recalled. It can reasonably be inferred that he has cooperated with requirements including any rehabilitation work he has been required to undertake. I find that the assessment of risk of re-offending/ serious harm in the OASys report in November 2018, is not sufficient in itself to justify deportation. I find that it is reasonably likely that the risk has reduced since the assessment. This would not only accord with the probability percentages in the report at R11.12, but such a conclusion can be reasonably inferred from the evidence and consideration of the risk factors identified in the report.

21. At the hearing before the FTT, the Respondent produced CID notes relating to incidents the Appellant was involved in whilst in prison. I did not have sight of these. Neither party was able to produce this evidence. In any event, Mr Tufan did not seek to directly rely on it. He accepted that the author of the OASys factored these incidents into the assessment of risk. I am unable to draw conclusions about the evidence and make findings of fact about the circumstances of the incidents without having sight of the evidence. I am however satisfied that there was evidence before the FTT pointing to the Appellant having a problem with authority and aggression which got him into trouble whilst in prison. This would accord with the assessment of risk in the OASys report. I take into account that in 2015 the Appellant received a community order for possession of a blade. He failed to comply with this. In addition, he has been convicted of assaulting a police officer. I attach significance to the evidence of escalation in offending identified in the OASys report. These are all matters that weigh against the Appellant. However, they do not present a complete picture. I must consider all the evidence.

22. I attach some weight to the Appellant having not re-offended having also considered that he was released less than 12 months ago, and he is still on licence with the prospect of deportation hanging over him.

23. I must make an evaluation of the likelihood of the Appellant offending and the consequences should he do so. I attach significant weight to the OASys assessment of risk of re-offending and serious harm. In addition, I consider the judge's sentencing comments and the evidence of the Appellant and family members. I have considered the risk factors identified in the OASys assessment. The Appellant has gone some way to prepare himself for employment, having undergone courses whilst in custody. Whilst now dependent on his mother, he is not able to work because of his status. There is no evidence that he is a drug user. At the time of the OASys assessment he had not relapsed and there was no evidence suggesting that he was currently taking drugs. No doubt if this was the case, he would have been recalled to prison. I accept that the Appellant now resides with his mother in Barking. Prior to his incarceration and when he committed the trigger offences, the family was living in Newham. These are matters which will, according to the OASys report, reduce risk.

24. I have had regard to the factors in Schedule 1. I am satisfied that there has been some rehabilitation. This is made out in the OASys report (R11.12). The Appellant was sentenced to a medium term of imprisonment. He is not a persistent offender, albeit I accept some evidence of escalation in seriousness between the offence in 2015 and the trigger offences. I have taken into account the fundamental interests of society and what they comprise (maintaining public order, preventing social harm, tackling offences which cause wider social harm caused by the misuse of drugs and the need to protect the public). I accept that the crimes committed by the Appellant are capable of amounting to a threat to the fundamental interests of society, subject to the level of risk presented by the Appellant. In this case the Respondent has not established that the threat is genuine, present and sufficiently serious. The Respondent has not established that there are serious grounds of public policy justifying deportation under 2016 Regulations.

25. The appeal is allowed under the 2016 EEA Regulations.

Signed *Joanna McWilliam* Date 29 August 2019

Upper Tribunal Judge McWilliam