Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00649/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9 July 2019	**On 17 September 2019**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR VAKLIN HRISTOV TSANEV
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer
For the Respondent: Mr A Burrett, Counsel, instructed by Miya Solicitors

DECISION AND REASONS

1. This appeal comes back before me following a hearing before me and Mr Justice Julian Knowles on 7 February 2019 which resulted in our finding that the First-tier Tribunal ("FtT") erred in law in its decision allowing the appellant's appeal against a decision to deport him.

2. I quote from the following paragraphs of that earlier decision in order to put this, the re-making of the decision, into context.

"2. The appellant is a citizen of Bulgaria born on 24 March 1973. On 19 October 2017 a decision was made to make a deportation order against him pursuant to regulations 24(6)(b) and 27 of the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations").

3. That decision was made following the appellant's conviction on 1 February 2017 for three offences of making indecent photographs or pseudo-photographs of children. On 21 February 2017 he received a sentence of 18 months' imprisonment and was made subject to a Sexual Harm Prevention Order ("SHPO") for a period of 10 years and also made subject to the notification requirements of the Sex Offenders' Register for 10 years. He has been assessed as being subject to Multi-Agency Public Protection Arrangements ("MAPPA") level 1.

…

35. However, we are satisfied that Judge Taylor's finding that the appellant did not represent a genuine, present and sufficiently serious threat affecting any of the fundamental interests of society was in error. We come to that conclusion for the following reasons.

36. Judge Taylor plainly did recognise the seriousness of the appellant's offending and he referred to the OASys report in that respect. However, whereas in his summary of the OASys report at [10] he referred, for example, to the appellant's apparent failure to accept the seriousness of the offences or the impact of his actions on the victims, and at [12] that the appellant had displayed a rigid thought process which was directly linked to his offending, those matters and other aspects of the OASys report which we consider to be of very great significance are not reflected in Judge Taylor's assessment of the risk of reoffending.

37. Thus, at 2.14 of the OASys report one finds the remark that it was concerning that even though in the pre-sentence report it was highlighted that by watching indecent images the appellant would perpetuate the demand for such offending against children, he had to be reminded of that during the interview for the OASys assessment. He also continued to make the correlation between watching action films and thrillers and never having committed acts of violence or become a killer and that he further deflected his responsibility by saying that the legal age in Bulgaria was 14 years.

38. The report states that that attitude "is a strong deflection" and could be his reasoning for watching more child indecent images in the future. At 11.5 one finds the conclusion that the appellant does not appear able to recognise the problem in downloading "untitled adult images" and neither did he show that once he had seen the images were indecent ones, there was a danger of him watching them or keeping them on his computer. At 11.9 the report refers to his "rigid thinking" when it comes to teenage girls and the effect he had on supply and demand by watching indecent images. He maintained the view that he had expressed about watching action films and murder films, yet not having killed. That rigid thought process was assessed as being directly linked to his offending behaviour.

39. In Judge Taylor's decision at [25] he said that although the appellant had downloaded appalling material, there was no suggestion that he personally took part in any of the abuse. In the same paragraph it states that although he expressed an interest in girls as young as 14 there was no suggestion that he had acted on that interest, apart from the offences. At [26] Judge Taylor repeated that there was no suggestion that the appellant was personally involved in the abuse and depravity.

40. We consider that Judge Taylor's conclusions not only fail to reflect what was said in the OASys report about the appellant's deflection or minimisation of his offending, but also that his decision errs in terms of a misplaced emphasis on the fact that the appellant was not personally involved in the actual abuse of the children shown in the images. Whilst it is true that the appellant was not himself actively involved, Judge Taylor failed to appreciate the significance of the harm caused by the appellant in his offending feeding the demand for those serious offences against children.

41. Furthermore, we consider that there is merit in the respondent's argument that the fact that the appellant is subject to the requirements of registration on the sex offenders' register and is subject to an SHPO was not properly reflected in the decision. Judge Taylor only considered those matters as indications that the appellant would not present as a risk in the future. Thus, at [26] he said that: "[v]arious safeguards have been put in place to prevent the appellant from down loading similar material in the future. He is on the sex offenders register and is the subject of a 10 year Sexual Harm Prevention Order." He referred to the restrictions on his internet use and so forth. However, the converse of the conclusion that those orders mitigate the risk of reoffending is that they reflect the fact that the appellant represents an ongoing risk to children. The making of an SHPO under s.103A of the Sexual Offences Act 2003 is not compulsory. A court may make such an order in certain circumstances, where it is satisfied that it is necessary for the purpose of protecting the public or any particular members of the public from sexual harm or protecting children or vulnerable adults, and so forth.

42. Furthermore, it is not just the likelihood of reoffending that is to be considered but the seriousness of the consequences if it does (as recognised in *Kamki* at [18]). The seriousness of the consequences in this appeal are not in terms of general prevention (general prevention being an impermissible consideration, see reg 27(5)(c) of the EEA Regulations) but are directly relevant to the harm caused to abused children by the demand that is fed by the viewing and downloading of the material such as in this case.

43. We do not find in Judge Taylor's decision an appreciation of the seriousness of the consequences of the appellant reoffending. He did refer to the OASys report's assessment that if the appellant did reoffend there was a medium risk of harm but we do not consider that that featured much, if at all, in his assessment of whether the appellant represented a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. The related point is that a low risk of reoffending is still a risk.

> 44. In addition, whilst this would not have been sufficient in itself for us to conclude that there was an error of law requiring Judge Taylor's decision to be set aside, we do consider that Judge Taylor erred in taking into account an unreported decision of the Upper Tribunal in circumstances where there is no indication at all that the Practice Direction dated 10 February 2010 at paragraph 11 on the citation of unreported decisions was complied with. The decision in Roszkowski is not, and does not claim to be, authority for any proposition of law.
>
> 45. Accordingly, we are satisfied that Judge Taylor erred in law in his assessment of the issue of whether the appellant represented a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. That error of law is such as to require his decision to be set aside."

3. At the resumed hearing the appellant relied on a supplementary bundle of 21 pages. He gave oral evidence limited to adopting his witness statement dated 16 October 2008. There was no cross-examination.

Submissions

4. Mr Bramble relied on the decision letter. He accepted that the appellant has acquired a right of permanent residence in the UK and thus that serious grounds of public policy and public security need to be established. Reference was made to regulation 27 of the Immigration (European Economic Area) Regulations 2016, in particular reg 27(5) and Schedule 1.

5. It was submitted that the appellant had been convicted of a serious offence, reflected in the sentence of 18 months' imprisonment. Mr Bramble referred to the details of the offence as set out in the sentencing remarks. The appellant is subject to a Serious Harm Prevention Order ("SHPO") for a period of 10 years and is required to register as a sex offender for the same period. He is on MAPPA level 1.

6. I was referred to various aspects of the OASys report in terms of the risk that the appellant poses. It was submitted that the evidence indicated that the appellant deflects or minimises his offending.

7. The letter from the probation officer dated 17 May 2019 should be afforded little weight in terms of any suggested change in attitude. He was convicted on 21 February 2017 and it is now only two and a half years later. The most recent probation letter does not outweigh what is said in the sentencing remarks and in the OASys report. The probation letter does not lead to any conclusions in itself.

8. It was submitted that serious grounds of public policy have been shown and the decision is a proportionate one.

9. With reference to *Kamki v Secretary of State for the Home Department* [2017] EWCA Civ 1715, referred to in the error of law decision at [24], Mr Burrett submitted that the appellant's case was different from *Kamki* in terms of the offence. Furthermore, in *Kamki* there was a direct sexual offence against a particular victim. In addition, the

appellant in *Kamki* did not plead guilty whereas this appellant pleaded guilty at the first opportunity, and showed remorse. Lastly, *Kamki* did not involve any important point of principle or practice.

10. It was true that there was an SHPO in this case but it was relevant that that involves the appellant being monitored. He has been released now for a period of almost 18 months. It is not suggested that he has breached the SHPO. It is unlikely that with the SHPO in place he would download such images again.

11. The OASys report indicates a low risk overall. Furthermore, the sentence of 18 months was at the lower end of the sentencing scale. The sentencing judge took account of the probation reports, the fact that he pleaded guilty, and that he had the support of his family. He has integrated into UK society in the more than 10 years that he has been here. He has his mother, daughter and girlfriend in the UK.

12. It was true that there was no evidence from his partner before the FtT, or indeed before the Upper Tribunal. The evidence is that he has a girlfriend although there was no evidence as to the strength of the relationship. All the family are aware of his behaviour and so it is not as if he has covered it up. He has the support of his family even though there is no witness statement or other evidence from his partner. That family support makes it less likely that he would reoffend.

13. The evidence indicates that there is no risk of him committing the same offence. There was evidence (at pages 207 – 209 of the appellant's bundle) of his requesting to undertake courses. He has been released on a tag as part of his bail conditions. That is a restriction that interferes with his way of life and his relationships but it has not led him to reoffend or to breach the SHPO.

14. So far as the most recent evidence from the Probation Service is concerned, it is not his fault that they have not given him a full or detailed letter. In any event, that evidence reveals that there are no reasons for concern. The burden of proof is on the Secretary of State to show that he was still a risk. The Secretary of State could have sought a report from the Probation Service.

15. The respondent's case, at best, is based on inference from answers recorded in the OASys report in 2017. Today matters have moved on. The evidence did not show that there was a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society either today or in the future.

Assessment and Conclusions

16. The parties agreed that a preserved finding of the FtT is that the appellant has acquired a right of permanent residence.

17. It was also agreed that the findings made at [24] of the FtJ's decision are to stand. Those findings are as follows:

- The appellant does not live with his partner and gave very little evidence of their relationship which he said started in 2016.

- There was no evidence that the appellant's relationship with his claimed partner was akin to marriage. They do not live together and have not expressed an intention to live together permanently.
- The appellant's daughter lives independently, is working full-time and studying.
- Although the appellant stated that he had a part to play in his mother's care, she was looked after by his daughter and an informal adoptive daughter. Although Social Services and other professional care was available, the appellant's mother chose to rely on family members.
- The appellant's relationship with his daughter does not meet the requirements of the Immigration Rules.
- The relationship with his partner does not meet the requirements of the Immigration Rules.

18. Regulation 27 of the EEA Regulations, so far as relevant, provides as follows:

> 27. - **Decisions taken on grounds of public policy, public security and public health**
>
> (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.
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> …
>
> (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.

…

(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.)."

19. It is clear from reg 27(8), therefore, that the Schedule 1 considerations need to be taken into account. I have considered the whole of Schedule 1 but quote particular aspects of it as follows:

Considerations of public policy and public security

…

Application of paragraph 1 to 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.

…

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.

…

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."

20. I have considered in detail the OASys report dated 13 July 2017, which is also referred to in the error of law decision. It is plainly not practicable to refer to every aspect of the OASys report but I highlight certain features of it. Thus, I note that the risk of reoffending is said to be low. The risk of serious harm in the community is also said to be low except in relation to children where the risk is assessed as medium. I note that on page 40 it states that the appellant is very motivated to address his offending and very capable of changing and reducing his offending. I also note that in answer to the question as to whether he thought he was likely to offend in the future the appellant's answer recorded at page 23 is "definitely not".

21. It is useful also to reiterate those features of the OASys report to which reference is made in the error of law decision at [36]-[38] in terms, for example, of the appellant's apparent failure to accept the seriousness of the offences or the impact of his actions on the victims. The fact that he had displayed a rigid thought process which was directly linked to his offending is also relevant.

22. In addition, as set out in the error of law decision, at 2.14 of the OASys report it was said to be concerning that even though in the pre-sentence report it was highlighted that by watching indecent images the appellant would perpetuate the demand for such offending against children, he had to be reminded of that during the interview for the OASys assessment. He also continued to make the correlation between watching action films and thrillers and never having committed acts of violence or

become a killer and that he further deflected his responsibility by saying that the legal age in Bulgaria was 14 years.

23. I quote again [38] of the error of law decision:

> "The report states that that attitude "is a strong deflection" and could be his reasoning for watching more child indecent images in the future. At 11.5 one finds the conclusion that the appellant does not appear able to recognise the problem in downloading "untitled adult images" and neither did he show that once he had seen the images were indecent ones, there was a danger of him watching them or keeping them on his computer. At 11.9 the report refers to his "rigid thinking" when it comes to teenage girls and the effect he had on supply and demand by watching indecent images. He maintained the view that he had expressed about watching action films and murder films, yet not having killed. That rigid thought process was assessed as being directly linked to his offending behaviour."

24. I also note that although the risk of reoffending is assessed in the OASys report as being low, that figure in terms of the risk of violent-type reoffending ('OVP') is 15% in year 2. I also note that on page 7 at paragraph 2.6 it states that the appellant does not recognise the impact and consequences of his offending on the victim or the community or wider society.

25. The most recent evidence from the Probation Service is in the form of a letter dated 17 May 2019 from a probation officer. It refers to the appellant's conviction and his release on licence on 20 November 2017, stating that his licence expires on 20 August 2018, with post-sentence supervision expiring on 20 November 2018. It goes on to state as follows:

> "Once he was released back into the community he was reporting for supervision on a weekly basis which progressed to fortnightly and finally monthly. During supervision the Internet Sexual Offending manual was used to address Mr Tsanev's offending behaviour. He was able to explore the changes he has put in place and to think back to the person he was before the offence, for example during supervision we explored and examined the course 'The old and new me'. We also explored his strengths and weaknesses and relationship issues. We also examined his life experiences, including the good, bad and confusing."

26. However, what that letter does not do is give any indication at all of whether the appellant's attitudes have changed from those highlighted in the OASys report, and thus gives no indication of his actual thinking in relation to his offending. Other than as a narrative of what the appellant has done in relation to his offending behaviour, it has very little value. Certainly, it does not in any way inform an assessment of the risk of reoffending and his current attitudes to the offences that he committed.

27. The context of the appeal in terms of the nature of the offences is important. That context can be seen from the sentencing remarks. To summarise, the appellant was in possession of 264 images of child sexual abuse, 183 of them being in category A. the vast majority of images that were downloaded were category A images involving children aged between two to three and fifteen years of age. The sentencing judge

referred to a number of aggravating factors including the high volume of images in category A which she said was indicative of the fact that there was deliberate searching for very young children. She referred to the age and the vulnerability of some of the children depicted in the images. There was a one minute video clip depicting the rape of a two to three year old child who was masked and being held down and who was suffering discernible pain and distress. The sentencing judge described that as a piece of footage "of the most sickening depravity". She went on to refer to other footage within category A involving the rape of a six to seven year old child, and in category B footage of children as young as four and two being sexually abused. She described it as "abuse of the utmost gravity".

28. It is also to be noted that she referred to what was said in the pre-sentence report to be the appellant's genuine remorse. However, although the appellant maintained that he was not attracted to children, the sentencing judge thought that he may still be in some form of denial because the search terms and the nature of the offending, as well as the large volume of material downloaded, demonstrated that there plainly is an attraction to children.

29. Whilst the safeguards of registration on the Sex Offenders' Register and the SHPO are relevant in terms of the controls that are designed to reduce the risk to the public, the fact of the matter is that an SHPO is for the purpose of protecting the public or any particular members of the public from sexual harm, or protecting children or vulnerable adults.

30. I bear in mind that the appellant has not committed any further offences, but a low risk of reoffending is still a risk. The harm that would eventuate if there is reoffending is significant, even accepting that the appellant, if he did reoffend in the same manner, would not be the direct perpetrator of the sexual abuse.

31. In my view, the sort of serious offending that the appellant was involved in could logically lead to a conclusion that such an offender does represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society even where the offender is not the direct cause of the abuse to the child victim. Such a conclusion does not involve an improper consideration of general prevention.

32. The point is reflected in paragraph 7 of Schedule 1 where, for example, it refers to the fundamental interests of society including preventing social harm and 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. Likewise, it refers to protecting the rights and freedoms of others, particularly from exploitation and trafficking.

33. Having considered all the evidence, I am satisfied that it is established that the appellant represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

34. I have considered the other matters set out at reg 27(5) and (6). So far as reg 27(6) is concerned, I have specifically taken into account the appellant's age; he was born in

1973. There is nothing to indicate that he is in anything other than good health. He has lived in the UK since 2007 and clearly will have integrated. In the supplementary bundle there are a number of certificates in relation to qualifications he has obtained in construction, customer service and driving.

35. In his witness statement he refers to having a daughter in Bulgaria who lives with her boyfriend. It is not suggested on behalf of the appellant that he would not be able to reintegrate in Bulgaria, although I bear in mind the length of time that he has been in the UK.

36. So far as his relationships in the UK are concerned, although it is said that he is in a relationship with a partner there was no evidence from her before the FtJ, and no evidence put before me. In the circumstances, it cannot realistically be said that his relationship with a partner in the UK carries much weight because the strength of that relationship has neither been evidenced nor tested.

37. The evidence before the FtJ in relation to the appellant's daughter was that she has been studying and working full-time since September 2018. She does not live with the appellant. She came to the UK aged 13 and lived with him until he was detained. She was suffering from depression and anxiety. The evidence before the FtJ was that she spoke to the appellant on most days.

38. As regards the appellant's mother, there is updated evidence in the form of a report dated 27 June 2019 from a clinical psychologist. To summarise, it refers to her suffering from anxiety and low mood, as well as suicidal thoughts. She had described thoughts of killing herself by jumping from somewhere high or using a rope. She did not wish to engage in discussion about keeping herself safe as she said that she was only at risk of acting on her suicidal thoughts if her son was to be deported as she does not see a future abroad or one in which he is not living near her. Earlier in the report there is reference to her having taken an overdose of 40 diazepam tablets in 2012. There is also a reference to two overdoses in Bulgaria, firstly when she was aged 27, and secondly several years later.

39. A summary of her physical health conditions refers to her having a heart condition and suffering pain from arthritis and fibromyalgia, as well as having cysts in her liver and kidney and polyps in her intestine and gall bladder. She had an operation in 2014 for a benign tumour in her adrenal gland and had previously had operations for a slipped disc and to remove breast tumours. She needs a wheelchair, which makes it difficult for her to go out.

40. The report also refers to her having daily contact with the appellant and she pays her granddaughter to help her wash and shop three times a day.

41. It refers to her having little engagement in meaningful activities outside her home and that she has become dependent on the appellant.

42. In the light of the evidence I have referred to, I accept that the appellant has a close relationship with his adult daughter, and with his mother. I accept what is said in

the clinical psychologist's report about the appellant's mother's health conditions, including in particular her mental health and her anxiety about the appellant being deported. Quite apart from the matters being of relevance to reg 27(6) they are relevant to the issue of proportionality which the decision must comply with (reg 27(5)(a)).

43. However, whilst the appellant's mother's circumstances are plainly of great significance, and she would miss the appellant were he to be deported to Bulgaria because she would not be able to see him as frequently as now, it is not the case that she would lose all contact with him. Quite apart from the likelihood of her being able to speak to him by phone, in the report to which I have referred it states that she visits Bulgaria once or twice a year. In that case, it is reasonable to conclude that she would be able to see the appellant in Bulgaria. Although she plainly has mobility problems, which are likely to make travelling more difficult, the report nevertheless refers to her visiting Bulgaria.

44. So far as her daily care is concerned, her granddaughter would be able to continue with the help that she presently provides. Whilst I accept that she would prefer assistance from family members, the fact is that State assistance would also be available to her.

45. The suicidal intent that she has expressed is plainly of very great significance. Again, however, she would be able to continue to benefit from treatment for her mental health conditions. She would have the support of her granddaughter, and she would be able to maintain contact with the appellant, albeit at a distance. The fact that there is a report from a clinical psychologist in the community mental health team in the area in which the appellant's mother lives demonstrates that she is in contact with mental health services and is receiving support.

46. It has not been suggested on behalf of the appellant that the prospects for rehabilitation are any better in the UK than they are in Bulgaria. He is familiar with the customs, culture and language of Bulgaria, which would assist in this respect.

47. I am satisfied that the appellant's personal conduct does represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Although the risk of reoffending is assessed as low, it is nevertheless a significant risk, and the harm that may eventuate in the event of reoffending is serious harm.

48. I have taken into account the appellant's particular circumstances in all respects. I am satisfied that the decision to deport him does comply with the principle of proportionality.

49. I am satisfied that there are serious grounds of public policy and public security which justify his removal.

50. No additional matters arise for consideration under Article 8 of the ECHR.

Decision

51. The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision having been set aside, I re-make the decision by dismissing the appeal.

Upper Tribunal Judge Kopieczek 16/09/19