Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: DA/00032/2019**

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice, London	**Decision & Reasons Promulgated**
On Monday 25 November 2019	**On Monday 13 January 2020**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

LUIS RAMOS

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr B Malik, Counsel instructed on a direct access basis
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION

1. By a decision promulgated on 4 September 2019, Upper Tribunal Judge Plimmer found an error of law in the decision of First-tier Tribunal Judge Place, itself promulgated on 28 May 2019. She therefore set aside the First-tier Tribunal's decision. Her error of law decision is annexed to this decision for ease of reference.

FACTUAL BACKGROUND

2. The Appellant is a national of Portugal. He was born on 20 August 1988 and came to the UK at some time during 1998 when aged nine or ten years old.

3. On 10 September 2004, the Appellant was sentenced to seven years' imprisonment for manslaughter and conspiracy to commit robbery. Due to his age, his detention was within a Young Offenders' Institution. A deportation order was made against him, but the Appellant successfully appealed against that order. His appeal was allowed by the Tribunal by a decision dated 23 August 2007. The Tribunal concluded that the Appellant was by then integrated into the UK. He had received most of his education and underwent most of his "life experiences" in this country. By contrast, he had few if any personal or cultural links to Portugal. At that time, the Appellant was said to be a medium risk of harm to the public but there was a low risk of re-conviction. The Tribunal concluded that the Appellant was not a genuine, present and sufficiently serious threat to the public. That decision was not challenged further. The Appellant was released from detention on 3 January 2008.

4. The Appellant was convicted of the following offences thereafter and prior to the index offence in this appeal:

    - 11 July 2011: possession of a class B drug
    - 1 August 2012: possession of a class B drug
    - 8 May 2014: driving a motor vehicle with excess alcohol

    None of those convictions led to any period of imprisonment.

5. The basis of the Respondent's deportation order on this occasion arises from an incident which occurred on 15 January 2017 when the Appellant caused the death of two young women as a result of his dangerous driving. On 16 October 2017, the Appellant was convicted of causing death by dangerous driving and was sentenced on 30 November 2017 to a term of imprisonment of sixty-three months. He remains in detention.

6. On 7 January 2019, the Respondent made a decision to deport the Appellant under regulations 23(6)(b) and 27 of the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations").

7. The Appellant has a daughter from a previous relationship who lives with her mother but with whom the Appellant maintains contact. His mother also continues to live in the UK as does his brother (with whom the Appellant was convicted in 2004) and his brother's family. He is now in a relationship with Ms [AD], a British citizen originating from Bulgaria. The couple are engaged.

8. The Appellant has been employed in various capacities in the UK. Prior to the index offence, he had aspirations to qualify as a Civil Engineer and had embarked on a degree course to that end.

ISSUES AND LEGAL FRAMEWORK

Level of Protection

9. The first and central issue between the parties which I have to determine is to what level of protection against deportation the Appellant benefits under EU law; in other words, the level to which the Respondent needs to establish her case.

10. The Respondent accepts that the Appellant acquired permanent residence on 6 April 2004 which has not been lost. For that reason, it is common ground that the Respondent needs to show that there are serious grounds for deporting the Appellant.

11. The Appellant contends however that he is entitled to the highest level of protection based on ten years' continuous lawful residence which has not been broken by his recent term of imprisonment. If he establishes that case, the Respondent would need to show that there are imperative grounds for the Appellant's deportation. The Respondent did not provide a position statement for the hearing before me as she was directed to do by UTJ Plimmer but, as I understood Mr Lindsay's submissions, the Respondent accepts that she is unable to show that there are imperative grounds to deport the Appellant. As Mr Malik pointed out, the Respondent did not put forward a positive case that imperative grounds exist at the hearing before the First-tier Tribunal (see [9] of that decision) and no such positive case was put to me.

12. The relevant provisions of the EEA Regulations are as follows:

> **"Exclusion and removal from the United Kingdom**
>
> **23.** ...
>
> (6) Subject to paragraphs (7) and (8), an EEA national who has entered the United Kingdom or the family member of such a national who has entered the United Kingdom may be removed if –
>
> …
>
> (b) the Secretary of State has decided that the person's removal is justified on grounds of public policy, public security or public health in accordance with regulation 27; or
>
> …"
>
> **"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.
>
> …

> (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 a right of permanent residence under regulation 15 and who has resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision; or
> >
> > …
>
> (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.).

13. My attention was drawn to the following case-law in relation to the issue of whether imperative grounds apply:

- Secretary of State for the Home Department v MG (Case C-400/12: 16 January 2014)

- MG (prison – Article 28 (3)(a) of Citizens Directive (Portugal) [2014] UKUT 392 (IAC)
- Secretary of State for the Home Department v Vomero (Case C-424/16: 17 April 2018)
- Secretary of State for the Home Department v Franco Vomero (Italy) [2016] UKSC 49
- Secretary of State for the Home Department v Franco Vomero (Italy) [2019] UKSC 35
- Secretary of State for the Home Department v Denis Viscu [2019] EWCA Civ 1052

14. I have read and taken into account those judgments. However, since there was no dispute as to the test which applies (as opposed to the manner in which it operates), I need do no more than summarise what that test is. That appears most succinctly at [31] of the judgment in Viscu citing from the CJEU's judgment in B v Land Baden – Wurttemberg (Case C-316/16) [2019] QB 126 as follows:

> "As to whether periods of imprisonment may, by themselves and irrespective of periods of absence from the host Member State, also lead, where appropriate to a severing of the link with that State and to the discontinuity of the period of residence in that State, the Court has held that although, in principle, such periods of imprisonment interrupt the continuity of the period of residence, for the purpose of Article 28(3)(a) of Directive 2004/38, it is nevertheless necessary – in order to determine whether those periods of imprisonment have broken the integrative links previously forged with the host Member State with the result that the person concerned is no longer entitled to the enhanced protection provided for in that provision – to carry out an overall assessment of the situation of that person at the precise time when the question of expulsion arises. In the context of that overall assessment, periods of imprisonment must be taken into consideration together with all the relevant factors in each individual case, including, as the case may be, the circumstance that the person concerned resided in the host Member State for the 10 years preceding his imprisonment: see *MG's* case paras 33-38"

15. In terms of the factors which apply, the CJEU set out the following guidance (cited at [32] of the judgment in Viscu):

> "72. As part of the overall assessment, mentioned in paragraph 70 above, which in this case, is for the referring court to carry out, it is necessary to take into account, as regards the integrative links forged by B with the host Member State during the period of residence before his detention, the fact that, the more those integrative links with that State are solid – including from a social and cultural and family perspective, to the point where, for example, the person concerned is genuinely rooted in the society of that State, as found by the referring court in the main proceedings – the lower the probability that a period of detention could have resulted in those links being broken and,

> consequently a discontinuity of the 10-year period of residence referred to in Article 28(3)(a) of Directive 2004/38.
>
> 73.Other relevant factors in that overall assessment may include…first, the nature of the offence that resulted in the period of imprisonment in question and the circumstances in which that offence was committed, and, secondly, all the relevant factors as regards the behaviour of the person concerned during the period of imprisonment.
>
> 74.While the nature of the offence and the circumstances in which it was committed shed light on the extent to which the person concerned has, as the case may be, become disconnected from the society of the host Member State, the attitude of the person concerned during his detention may, in turn, reinforce that disconnection or, conversely, help to maintain or restore links previously forged with the host Member State with a view to his future social reintegration in that State.
>
> 75.On that last point, it should also be borne in mind that, as the Court has already pointed out, the social rehabilitation of the Union citizen in the State in which he has become genuinely integrated is not only in his interest but also in that of the European Union in general…"

16. Finally, for the sake of completeness, I have regard to the Court of Appeal's recent judgment in Terzaghi v Secretary of State for the Home Department [2019] EWCA Civ 2017. Although that was handed down on 20 November 2019, neither party drew it to my attention, and I did not therefore hear submissions on it. However, the judgment does not alter the principles as put forward to me by the advocates in this case, but it does provide a very clear and concise exposition of the way in which the test for imperative grounds is to operate at [12] of the judgment as follows:

> "The following propositions were common ground before us: (1) the 10 year period referred to in regulation 21(4) is counted back from the date of the decision to deport, see MG (Portugal) at paragraph 24, Warsame at paragraph 10 and FV (Italy) at paragraph 65; (2) the 10 year period has to be a continuous period of residence in the United Kingdom, see MG (Portugal) at paragraph 25 although this does not prevent some absences provided that there has not been a transfer of 'the centre of the personal, family or occupational interests of the person concerned'; (3) periods of imprisonment will, in principle, interrupt the continuity of residence for the 10 year period, see MG (Portugal) at paragraph 36 and FV (Italy) at paragraph 70. This is because the imposition of a prison sentence showed non-compliance with the values expressed by the society of the host member state in its criminal law, see Onuekwere at paragraph 26; but (4) if a citizen of the European Union has resided for 10 years in the relevant state before the period of imprisonment the earlier period ' together with the other factors going to make up the entirety of the relevant considerations in each individual case', may be taken into account in determining whether the person has regulation 21(4) status, see MG (Portugal) at paragraph 36 and FV (Italy) at paragraph 71; (5) integration is based on only on 'territorial and temporal factors but also on qualitative elements, relating to the level of integration in the host member state', see paragraph 25 of Onuekwere and account should be taken of the following criteria to consider

> whether integrative links have been broken including 'how the penalty is enforced; consideration of the offence committed; general behaviour while in detention; acceptance and completion of treatment; work; participation in educational and vocational programmes; participation in the enforcement of the sentence; and maintenance of personal and family ties in the host member state', see paragraph 123 of the Advocate General's opinion as approved by the judgment of the Court at paragraph 73 in FV (Italy); and (6) the cases where there has been a prior period of 10 years residence and then a period of imprisonment in the lead up to the decision to deport have, for purposes of regulation 21(4) status, been referred to as 'a maybe category of cases', see Warsame at paragraph 9."

I note as an aside that the decision in that case was taken under the EEA Regulations 2006 and that regulation 21 corresponds to regulation 27 of the EEA Regulations 2016 which applies in this case.

Other Issues

17. As I have already noted, if I conclude that the Respondent needs to show that there are imperative grounds to deport the Appellant, I need go no further and the Appellant will succeed in his appeal.

18. If I conclude that the imperative grounds test is not met, then I need to go on to consider whether there are serious grounds for believing that the Appellant is a genuine, present and sufficiently serious threat to public policy or security. That must be based on the individual threat which the Appellant poses and does not incorporate considerations such as deterrence. I must also consider principles such as the proportionality of the decision to deport in the event that this becomes relevant.

THE EVIDENCE

19. I have before me the Appellant's original bundle of evidence to which I refer below as necessary as [AB/xx]. I also have a supplementary bundle from the Appellant to which I refer as [ABS/xx]. Finally, I have a Respondent's bundle to which I refer as [RB/xx].

20. Before I turn to the oral evidence given at the hearing before me, I begin by noting the basis on which an error of law was found as appears at [10] and [11] of the Judge Plimmer's decision; in essence that Judge Place failed to provide adequate reasons for her conclusions that the Appellant benefits from the highest level of protection as the Judge did not engage with the circumstances of the offence in 2017 and made no reference to the Appellant's behaviour in prison. Furthermore, the Judge's reliance on the Appellant's relationship with his daughter did not address the consequences of the Respondent's imprisonment from 2017.

21. At [12] of her decision, however, Judge Plimmer concluded that "[t]he fact finding is likely to be limited to the updated evidence as there has been no challenge to the

findings of fact made by the FTT". It is therefore convenient to set out Judge Place's findings in order to incorporate those into my decision:

> "24. In making my findings I have taken account of all the documentation before me.
>
> 25. I found all 3 witnesses to be truthful and credible witnesses of fact. Relying on their evidence, I find that the Appellant came to the UK in 1998 with his mother and brother. I find that, though he still is able to speak Portuguese, he has no other cultural, social or family link with Portugal and that he has been in the UK continuously since 1998, save for a brief visit to Portugal to renew his passport. I find that that visit did not interrupt his continuity of residence for the purposes of Regulation 3.
>
> 26. I find that the Appellant has an 8 year old daughter in the UK. Though I was not given direct evidence on the point, I find on the balance of probabilities that his daughter is a British citizen. I find that before he was imprisoned in October 2017 he saw her on a regular basis and communicated with her even more regularly. I accept [LB]'s evidence that he is still in contact with her several times a week by phone from prison.
>
> 27. I find that the Appellant has strong family links in the UK with his mother and brother and his brother's family.
>
> 28. I note from the decision of Immigration Judge Holden in 2007, when the Appellant was still in custody for manslaughter, that the Tribunal on that occasion accepted, in allowing his appeal against deportation, that the Appellant was integrated into UK society to the extent that he had spent the majority of his life and education in the UK, had little or no personal or cultural links to Portugal and had a good record in prison.
>
> 29. I find that in the approximately 9 ½ years between periods of imprisonment the Appellant strengthened his integration into UK society by working – there is documentary evidence that he was employed between September 2012 and April 2015 and between September 2016 and March 2017 – and by becoming a father to a child who has spent all of her 8 years of life in the UK.
>
> …
>
> 34. Counting back 10 years from the Respondent's decision of 7th January 2019 brings us to 7th January 2009. The Appellant spent some 15 months (October 2017 to January 2019) of the required 10 year period in prison. The question for me is whether that period of imprisonment should be taken as interrupting his continuity of residence.
>
> 35. I am required to take account of all relevant circumstances. Starting with the circumstances which I consider weigh against the Appellant, I note the severity of the offence which led to his being imprisoned. Although the witnesses and even Mrs Nicholson persisted in referring to the 'accident', there should be no hiding from the fact that he committed a crime which led to the death of 2 people. Again, I do not accept Mrs Nicholson's submission that, in effect, this offence was a 'one off'. Between his periods of imprisonment the Appellant had accumulated a number of offences. It is true that none had led to a period of imprisonment but they include an offence of

> drink driving. Through drink driving the Appellant might have killed someone earlier. I find that his latest offence is part of an escalating pattern of offending in the area of driving.
>
> 36. I note too, that it is not disputed that the Appellant was warned in a letter dated 19th December 2007 that if he offended further he would be subject to deportation action. Notwithstanding that warning the Appellant went on to commit a number of less serious offences and eventually the offence which led to 2 people being killed.
>
> 37. On the other hand, I note that the Appellant was found by the Immigration Judge in 2007 to have integrated into UK society and that the Tribunal in that case took account of his conduct in prison in deciding that he was so integrated. His first time in prison, in other words, contributed to his integration into UK society.
>
> 38. The Appellant spent over 9 years and 9 months out of prison between offences. His integration was strengthened significantly by the birth of his daughter in 2010 and his ongoing contact with her. I find that he has a genuine and subsisting parental relationship with her and that she would not be able to join him in Portugal because of her mother's family commitments to the UK. I find that it would be in his daughter's best interests for the Appellant to remain in the UK.
>
> 39. The Appellant has spent a total of some 21 years in the UK. He has no links to Portugal other than an ability to speak the language…."

22. Mr Lindsay objected to the preservation of the finding at [37] of Judge Place's decision which he said was wrong in law in light of the Supreme Court's 2019 judgment in Vomero (see [45] of that judgment). The Supreme Court was there concerned with whether a period of imprisonment can count towards the five years required for permanent residence. The Supreme Court held that the period must be completed prior to imprisonment for the index offence. The period in prison cannot count towards the required five years' period. I accept to that extent that the final sentence of [37] of Judge Place's decision may be infelicitously worded. However, that makes no material difference in this case because, on any view, the Appellant has completed a period of five years' continuous residence between periods of imprisonment. Integration is only relevant to the ten years' period if that period is completed. Also, the first Tribunal's finding as to integration is only a starting point and can be displaced by subsequent events.

23. In light of the potential relevance of the earlier period of imprisonment to the Appellant's integrative links, however, it is necessary to have regard to precisely what was found by the Tribunal in relation to the earlier period of imprisonment. The hearing at that time took place on 10 August 2007. The Appellant had by that time been present in the UK for about nine years. He was sentenced on 10 September 2004 to a period of detention in a Young Offenders' Institution for seven years as a result of a conviction in July 2004. At the time of conviction and sentence, the Appellant had therefore been at liberty in the UK for about six years. The Appellant remained in detention at the relevant time; his earliest release date was 13 January 2008. No issue therefore arose in relation to whether there were

imperative grounds requiring his deportation. The finding as to integration was made in the context of considering proportionality. The finding made by the Tribunal on that occasion was as follows:

> "We find from the background material supplied to us and from our observations at the hearing, that the Appellant has integrated into the United Kingdom to the extent that the majority of his education and life experiences have taken place in the United Kingdom. He has, in effect, little or no personal or cultural links to Portugal. His immediate family are resident in the United Kingdom. We also find from the evidence at the hearing that he is in good health and has obtained some skills whilst in custody so as to enable him to either continue with his education and/or find employment as a painter and decorator."

24. Although Judge Plimmer preserved the findings of fact made by Judge Place, she also observed that the Judge had given inadequate reasons to support her conclusion that the Appellant was so integrated in the UK that the periods of imprisonment had not broken the link and he could therefore show ten years' continuous residence. It is therefore necessary for me to say something about the evidence which was before Judge Place to which reference was not made in her findings.

25. Dealing first with the period following his release from detention in 2008 and re-imprisonment in November 2017, the Appellant gives evidence in his statement at [AB/349-351] that he was employed first as a courier in 2010 before starting an apprenticeship in 2012 in highway maintenance which he completed in 2014. He began a degree in civil engineering in 2016 and had completed the first year of that course before his latest conviction (see witness statement of Ms [D] at [ABS/1-3, paragraph [6]). Letters of support from various employers and his college lecturer appear at [AB/222-226]. The Appellant came to the UK with his mother as a child. Most of his education was therefore in the UK (although of course some of that will have been whilst he was in detention for the earlier offence of which he was convicted in 2004)

26. The Appellant's mother and brother and his brother's family remain in the UK. The Appellant's mother, Vera Cristina, provided a statement for the First-tier Tribunal hearing which is at [AB/91-93]; she also gave oral evidence at that hearing. She there explains that she and the children came to the UK to avoid an abusive partner/father. She also records that she was born in Angola before moving to Portugal aged seventeen/eighteen years and had no family in Portugal. She herself lived in Portugal for only about seventeen years. She confirms that the Appellant has lived with her when not in detention/prison and has helped her with her various health problems.

27. The Appellant's brother, Nuno Ramos has provided a statement which appears at [AB/388-390]. He also gave oral evidence before Judge Place. The statement confirms the evidence of the Appellant's mother as to the family's background. It also confirms that the Appellant has a HNC/HND in civil engineering and has

completed an apprenticeship in that field. The Appellant's brother confirms that the family has no relatives in Portugal; he has himself not returned to Portugal since 1998 – the Appellant has returned once to renew his passport. The Appellant's brother also provides evidence about the Appellant's daughter who is also close to his own two children. He says that [C] "desperately misses her father". She told her mother that it was difficult for her to be at the Appellant's home because "the house 'smelled like daddy' and that made her miss him even more".

28. The Appellant's former partner and the mother of his child, [LB] has also provided a statement which is at [AB/94-95] and wrote a letter at [AB/122]. She too gave oral evidence before Judge Place. There is documentary evidence that both she and her daughter, [C], are British citizens. [C] was born in December 2010. In her letter, [LB] describes the relationship between the Appellant and [C] as a very strong one and that, before his imprisonment, he had contact with her twice a week (when [C] went to his house) and called her all the time. [LB] refers to [C]'s behaviour worsening since the Appellant was sent to prison. The Appellant's involvement in [C]'s life is confirmed by a letter from her pre-school. In her statement, [LB] confirms that the Appellant has called [C] from prison two to three times per week. [LB] also points out that she has three other children. Two are adults. One remains a teenager. The two younger children require support due to learning disabilities and, in the case of the teenage boy, other mental health conditions. She points out that she cannot take her other children with [C] to visit the Appellant in Portugal.

29. Ms [D] is the Appellant's fiancée. She provided a statement dated 20 April 2019 for the First-tier Tribunal hearing at [AB/337]. She confirms that they entered into a relationship in 2011. They became engaged in August 2016. The couple had planned to get married in 2019 but those plans had to be put on hold due to the Appellant's conviction. Ms [D] also provided a further statement at [ABS/1-3] which speaks of the Appellant's qualifications and aspirations and his bond with his daughter with whom she has also formed a strong bond. She says that she would struggle to go to Portugal with the Appellant as she has elderly parents who depend on her. She lives with them presently. She elaborated on that evidence before me. She now says that she would find it impossible to go with the Appellant to Portugal because of the situation of her parents.

30. The Appellant also gave oral evidence before me and was cross-examined although no further witness statement was provided. He accepted the criticism made in the OASys report (with which I deal below) that he had done things on impulse in the past and without thinking. He said that he accepted that he "needs to practice and ensure that he takes other people's feelings into consideration". When asked whether that meant that he accepted that he still had work to do to deal with his behaviour, he said that there is "always more work to do" but "not much". He did not think that everything which he did was on impulse but accepted that more could be done to address his compulsive behaviour. He would be helped in that regard by his family support.

31. The Appellant said that, since his release in 2008 until his more recent imprisonment he had made positive changes to his life and had come a long way. He accepted that he had been convicted since 2008 on six occasions, but he said that they were all non-violent and non-gang offences. He accepted that he had committed those offences and that, as a result of his actions, two innocent people had lost their lives. However, he said that these were all "terrible mistakes which [he] was paying for".

32. The Appellant accepted that the recent offence was not an accident because he was acting dangerously, driving at speed and had breached a red light. When he was referred to his statement which described the offence as an accident, he said that he did not mean that the incident itself was an accident but the events of the day of the offence. He did not know how to describe it other than as an accident. However, he fully accepted that it was not an accident. He had pleaded guilty to causing death by dangerous driving. The Appellant accepted that he had driven away from the scene of the incident and had not offered medical assistance, but he had telephoned for the emergency services and gave his name and his correct address. He had just panicked but, because he had given his particulars, he knew it was only a matter of time before the police would come for him. His home was near to where the incident occurred.

33. He confirmed that he has maintained contact with [C] by regular telephone calls since being in prison. He feels that he has let her down. He says that he would not commit any further offences as he could not put his family, his fiancée and his daughter through the same experience. When asked whether [C] would be able to visit him in Portugal with either [LB] or Ms [D], he said that he did not know. That would be a matter for his current or ex-partners.

34. The Appellant pleaded guilty to the offence of causing death by dangerous driving (and two associated driving offences for which he was sentenced concurrently). As a result, I do not have any sentencing remarks in relation to the index offence. I do, however, have the sentencing remarks in relation to the offence in 2004 which led to the Appellant's first conviction. The Appellant was at that time a minor. The sentencing remarks show that the Appellant was part of a gang (including the Appellant's brother) who robbed an individual in his home. The individual was, in the course of the robbery, bound and gagged, hit with a baseball bat and stabbed in the legs. He subsequently died from asphyxiation. The Appellant claimed that he remained outside the house as a look-out but that was not accepted. However, the Judge did accept that the Appellant "probably played a lesser role" and "came in as the youngest of the offenders at the last minute." The sentence which the Judge considered appropriate was one of eight years but, because he had spent a year in care on an intensive supervision and surveillance programme, the sentence handed down was seven years.

35. I have already quoted from the Tribunal decision in relation to that earlier offence. The Tribunal recorded at [23] to [25] of its decision that the "Appellant has made good use of his time in custody". Based on the courses and his motivation to

change as well as his risk profile and a supporting letter from one of the officers at the YOI where the Appellant was detained, the Tribunal concluded that the Appellant did not at that time pose a genuine, present and sufficiently serious threat.

36. An OASys report was completed in relation to the Appellant dated 30 March 2018 ([AB/302-332]). The report provides some detail of the index offence. It corroborates the Appellant's account that he did not immediately depart the scene of the accident but panicked as the police arrived. However, the Appellant told the compiler of the report that the offence occurred when he tried to beat a traffic light which had changed to amber. He said that the two victims were crossing the road as he did so even though the pedestrian light was on red. However, the report notes a different version taken from the CPS papers. The Appellant is said to have been seen on camera breaking "approximately 2 sets of red lights which activated a red light camera" ([2.1]). His behaviour at the time of the offence is assessed to have been "extremely reckless and risky" as the Appellant accepted ([7.5]). The compiler of the report notes at [11.10] that "Luis states that normally he does not act impulsively and thinks things through for best results. In relation to the current offence this quite obviously indicates that this was an impulsive action taken at the last minute. The fact that he had previously breached 2 sets of red lights before this collision took place would raise the question on whether he actually planned not to stop at any of the lights which may have been due to the time of the offence." The report shows that the Appellant was tested for alcohol and drugs on arrest at his home and that both tests came back negative.

37. The assessment of the report is that the Appellant recognises the impact and consequences of his actions and has accepted responsibility for the offence. However, it is noted that the offence is part of a pattern of similar offending and an escalation in seriousness. The report assesses a 15% chance that the Appellant will offend within one year of discharge and a 26% chance that he will do so within two years. However, he is said to be at a low risk of violent reoffending (5% year one and 9% year two) and a low risk of non-violent reoffending (7% year one and 13% year two). The compiler of the report assesses that the risk is linked to impulsive behaviour and that the risk is likely to be greatest when the Appellant perceives that there is no risk and without thinking through his actions. The Appellant is assessed to be a medium risk of serious harm to the public and otherwise a low risk. A medium risk indicates that "there are identifiable indicators of risk of serious harm. The offender has the potential to cause serious harm but is unlikely to do so unless there is a change in circumstances, for example, failure to take medication, loss of accommodation, relationship breakdown, drug or alcohol misuse".

38. The Appellant's bundle contains certificates showing that he has completed the following courses:

    - Restorative Justice & Victim Awareness Programme
    - Beyond Cravings Programme

There is no evidence about what those courses entailed.

SUBMISSIONS

39. Mr Malik provided a helpful skeleton argument setting out the Appellant's position. As I have already noted, there was no position statement from the Respondent. I heard oral submissions from both representatives.

Appellant

40. Dealing first with the level of protection against deportation, Mr Malik invited me to have regard to the three separate periods which he said were relevant to the issue whether imperative grounds are required to be shown. First, the Appellant has resided in the UK from 1998 to 2019 that is a period of twenty-one years. Second, the Appellant was at liberty between the two periods of detention from 3 January 2008 to at the earliest 14 October 2017. He was not in fact incarcerated until sentence on 30 November 2017. That is a period of nine years and eleven months. That period, he says, falls to be considered when looking at whether the Appellant had forged integrative links which had been broken by his most recent period of imprisonment. Third, the entire period prior to 30 November 2017 should be considered to be one where integrative links were built up, particularly in light of the earlier appeal decision in 2007 which found that the Appellant was integrated even though he was still in detention at the relevant time following the manslaughter conviction. Mr Malik submitted that the concept of integrative links being broken does not change over time. The previous appeal decision dealt with whether the links formed to that point had been broken by that period of detention and concluded that they had not. Mr Malik accepted that this was not a preserved finding. However, he pointed out that the basis of the previous Tribunal's decision was the Appellant's behaviour whilst in detention which was a relevant factor (see [50] of the judgment in Viscu). The finding was also part of the background to which I had to have regard following the Devaseelan guidance.

41. In relation to the offending between the two more serious offences, Mr Malik pointed out that those were two of possession of drugs in 2011 and 2012 and one of driving whilst over the limit. He accepted that criminal offences were serious by definition but submitted that some were more serious than others. He asserted that it was only those which lead to imprisonment which diminish integrative links. He accepted however that those other offences were admissible considerations although he did draw to my attention that the Appellant had spent more than ten years in the UK by the time of the first of the intervening offences if one included the period spent in prison.

42. As Mr Malik submitted and I accept, whether the Appellant has built up integrative links with the UK is a value judgment. The fact that the Appellant had spent a period of very nearly ten years at liberty between the two periods of detention was, he said a "deeply admissible" consideration. The question whether the period of imprisonment for the index offence had broken those links was also a matter of assessment. The OASys report was relevant as was evidence of the

courses completed whilst in prison. Although the Appellant had completed few courses, it was difficult to see what more he could do as he was limited by the courses on offer to him. He had not yet been released and therefore had not had the opportunity to show how he would behave on licence. The OASys report indicates that the index offence was related to a character trait namely impulsive behaviour. The Appellant had addressed that. The Appellant has the further motivation since his first offence of a daughter with whom he enjoys a close relationship. That is a powerful motivating factor.

43. In relation to the evidence concerning integrative links and whether those were broken by the recent imprisonment, Mr Malik drew my attention to paragraphs [25] to [32] of Judge Place's decision which I have set out at [21] above. He drew my attention to Schedule 1 to the EEA Regulations which set out the factors to which I have to have regard which includes the best interests of the Appellant's child (paragraph 7(k) of Schedule 1). I should also have regard to the fact that Ms [D] is a British citizen with a good job and her own family in the UK. She could not relocate to Portugal.

44. In the event that I was unpersuaded that the Appellant attracts the highest level of protection, Mr Malik also submitted that I should find that there were not serious grounds to show that the Appellant is a genuine, present and sufficiently serious threat to public policy or security. He pointed out that rehabilitation is a "deeply material" factor. He referred to the evidence of a lack of family in Portugal and the presence of all family members in the UK; also, that the Appellant's last twenty-one years are "entrenched in the UK". Mr Malik submitted that, on those facts which are not disputed, the prospects of the Appellant's rehabilitation are higher in the UK where he has family members, friends and his daughter whereas in Portugal he would be entirely alone.

45. In terms of the risk which the Appellant poses, Mr Malik pointed out that the offence was one which did not involve the intention to harm or kill. He submitted that the offence concerned the manner of the Appellant's driving and was tantamount to strict liability. The Appellant had accepted responsibility for the offence and had accepted that it was not right to call it an accident since he had killed two people. Mr Malik also referred to the low risk of reoffending found in the OASys report.

Respondent

46. Mr Lindsay urged me to have regard to the entirety of the Appellant's criminal history. As he put it, that history is "book-ended" by two very serious offences both giving rise to lengthy sentences. Those offences were manslaughter for which the Appellant was convicted aged sixteen years to a term of seven years and causing death by dangerous driving in 2017 for which he had been sentenced to five years and three months. Mr Lindsay pointed out that the Appellant had the opportunity to reform on his release in 2008 but had not taken it. That was relevant both to the risk of reoffending and the issue of integrative links. The

criminal law imprisons those who break the law because it recognises the lack of conformity with societal norms. Imprisonment therefore shows a lack of integration.

47. Mr Lindsay also pointed out that those two offences were not the only ones of which the Appellant had been convicted. There were convictions also in 2011, 2012 and 2014. Although those were more minor, he said that they show widespread offending in the interim period. There was no lengthy period when the Appellant was at liberty during which he had not offended or was not convicted. He was released from his first offence on 3 January 2008 and imprisoned again on 30 November 2017. The ten years' period dates back from the date of the Respondent's decision on 7 January 2019. At that date, the Appellant was already in prison. If one counts back from November 2017, the Appellant had not been at liberty for ten years. There was no clear continuous period of ten years when the Appellant was at liberty in the UK even if one ignored the other offences.

48. Mr Lindsay accepted that the strength of integrative links was important and relevant to whether those links were broken. However, he submitted that in this case the links were not strong. That the Appellant had built up a period of residence of five years to qualify for permanent residence did not mean that there were strong, integrative links. After all, he pointed out that, as indicated by the Supreme Court's judgment in Vomero in 2019, a person entitled to rely on the highest level of protection must by definition have permanent residence. It is a pre-requisite.

49. Mr Lindsay also pointed to the escalation in the seriousness of the Appellant's offending culminating in the index offence. The conduct giving rise to that offence and the pattern of offending shows, he said, a disregard of the law and the safety of others. The OASys report provides support for that submission. Although Mr Lindsay recognised that the OASys report indicated that the risk of the Appellant reoffending was a low one, he submitted that the numbers are still high, and it could not be ruled out that if the Appellant impulsively reoffended again the seriousness would not be the same as on the occasion of the index offence. He pointed out that the risk of violent reoffending was close to 1:10 and the chance of reoffending within two years was more than 1:4.

50. Mr Lindsay submitted that if the Appellant's evidence were taken with the OASys report, it showed that the Appellant would continue to act in a way which was incompatible with societal values. The Appellant had admitted that he needed to practise more and take others' feelings into account which was recognition that he had not dealt with his own impulsive behaviour. Although Mr Lindsay accepted that the index offence was not one of intention, he pointed out that the Appellant's actions had still led to two violent deaths. The Appellant's reference to the offence as an accident and the suggestion that other convictions were non-violent suggested that the Appellant tended to minimise the seriousness of his offending. That is relevant to the risk of reoffending and the degree of integration. Although

Mr Lindsay accepted that the Appellant had pleaded guilty to the index offence, he pointed out that this was in the face of compelling evidence. Although the Appellant now takes responsibility for the offence, he accepts that he panicked at the time and drove away.

51. Mr Lindsay therefore submitted that the Appellant could not show that he was entitled to the highest level of protection; due to the extant risk of reoffending, the real and extant risk of serious harm, the lack of a ten years' period of continuous residence and the lack of integrative links.

52. If I accepted that submission, Mr Lindsay submitted that I should conclude that there are serious grounds in this case for deporting the Appellant. He also submitted that I should find the deportation to be proportionate in light of all the circumstances. Although it was said that the Appellant's mother and daughter could not accompany the Appellant to Portugal to live, there was no reason why they could not visit. The Appellant himself provided no such reasons in evidence. The Appellant's presence in the UK was a sufficient threat to public policy and security which was a weighty factor. Although best interests of [C] were a relevant consideration they were a primary consideration and not the paramount one and therefore they could be and would be outweighed by the Appellant's offending.

DISCUSSION AND CONCLUSIONS

Imperative Grounds

53. The Appellant has resided in the UK now for about twenty-one years. Of that period, he has spent about five and a half years in detention – three years and four months between 2004 and 2008 and two years and two months between November 2017 and the present time. He has not completed a period of ten years at liberty between the two periods of detention; that period was one of nine years and approximately eleven months. Neither had he completed a period of ten years at liberty prior to his first period of detention. On that occasion, he had spent about six or seven years in the UK. As such, unless one is able to amalgamate the two periods at liberty, the Appellant cannot achieve the necessary period of residence such as to require imperative grounds for deportation.

54. I do not accept Mr Malik's proposition that the periods of detention can count towards the ten years' residence. Although I accept of course that the ten years' period must be counted back from the date of decision – here 7 January 2019 – the case-law does not support an argument that the period of residence in detention can itself count towards the ten years' period (see in particular point (4) of the analysis in Terzaghi set out at [16] above). The issue of integrative links is a separate one. If the Appellant had spent ten years at liberty prior to his incarceration, then that issue would arise but otherwise not.

55. This is an unusual case. The Appellant's period of lawful residence is, as Mr Lindsay put it, "book-ended" by two substantial periods of detention for separate

and unconnected offences. Even if the first period of detention did not break the Appellant's integrative links (as the previous Tribunal found), the Appellant still could not show a ten years' continuous period of residence because of the breaks in residence formed by those two periods of detention. For that reason, the Appellant has failed to establish that imperative grounds are required to justify his deportation. I do not therefore need to consider whether the period of detention from November 2017 has broken the Appellant's integrative links. I do however need to consider whether the Appellant should be deported on the basis that he is permanently resident in the UK which I now move on to do.

Serious Grounds; Genuine, Present and Sufficiently Serious Threat

56. In light of the Appellant's permanent residence, the Respondent has to show that there are serious grounds for deporting the Appellant to Portugal. My assessment of that issue requires me first to consider whether there are serious grounds for believing that the Appellant remains a genuine, present and sufficiently serious threat. The assessment of the threat must be based on the Appellant's personal conduct and does not include factors such as deterrence. Obviously, whilst what I have to assess is whether the threat is a present one, the Appellant's past actions are or may be highly material to his propensity to reoffend.

57. I begin with the Appellant's first offence when he was still a teenager. I am satisfied that this has no bearing on whether the Appellant is a current risk. The nature of the crime committed at that time is wholly different to those offences committed subsequently. The crime was gang-related. It was a crime of intentional violence at a time when the Appellant was a very young man although recorded in the evidence before the first Tribunal as being very mature. The Appellant's brother was also involved and the Judge records that the Appellant's own involvement was at a lower level and that he was brought in at the last minute. The Appellant has not committed any crime of intentional violence since his release in January 2008. I am satisfied that the Appellant does not pose a threat now of committing a further offence of that nature.

58. I can also largely disregard the two convictions of drug possession in 2011 and 2012. Whilst not wishing to downplay the threat to society of drug abuse, the offences involved Class B drugs and not Class A drugs and the offences were of simple possession and not supply. It is not suggested that the Appellant has offended then or since as a result of drug abuse. There is no evidence that he continues to use drugs. There is no mention of this as a risk factor in the OASys report. The only potential relevance is as an indication of the Appellant's disregard of the law.

59. The other offence for which the Appellant was convicted in 2014 of driving whilst under the influence of excess alcohol is however relevant. The index offence is one involving driving. To that extent, the index offence involves an escalation. However, the index offence was not committed by the Appellant whilst under the influence of alcohol. On the other hand, it is relevant not only because of the

nature of the offence but also because it again shows the Appellant's disregard for the law and also his impulsive nature. That is highly material to the index offence and current threat.

60. Turning then to the index offence, I do not accept Mr Malik's characterisation of that offence as one which is to be equated with an offence of strict liability. Whilst I accept that the offence does not involve intention to cause harm, it does involve a standard of driving which is considered to be "dangerous" rather than simply careless in nature. As such, a degree of disregard for the safety of others and recklessness is involved. The consequences of the Appellant's actions were very serious indeed involving the deaths of two innocent pedestrians. Such disregard for the safety of other road users indicates a lack of regard for the law.

61. I accept Mr Lindsay's submission that the nature of the Appellant's past offending indicates that, if he were to offend again, the consequences could be very serious. The Appellant has been involved in or responsible for the death of three innocent persons. As such, I accept that if the threat posed by the Appellant is a genuine and present one, it is sufficiently serious. The crux of the issue is whether the threat is one which is genuine and present.

62. This is an unusual case in that the risk posed is not due to any motivation based on circumstances. It is not suggested that the index offence was motivated by financial need or alcohol or drug abuse. I have already noted that, whilst this might have been the case in relation to the earlier offences, the index offence was not said to be have been caused by drug or alcohol use. The causative factor disclosed by the OASys report is said to be impulsive behaviour due to lack of recognition of risk. The categorisation of risk as "medium" is, as I have already noted, indicative of a lack of likelihood to offend unless circumstances change but here it is not the Appellant's circumstances that have caused the offending in the first place. As such, it is quite difficult to assess whether that risk is likely to materialise.

63. The fact that the Appellant acts in an impulsive manner and without thinking is a facet of his personality and might also indicate a lack of maturity. I note however that the evidence before the first Tribunal was that he is very mature, and he did not come across in his evidence to me as immature. His evidence was considered and thoughtful. He has accepted however that he does need to adjust his behaviour to ensure that he does not offend in this way again. Although he did say that the work to deal with this was ongoing, I am satisfied that he has recognised the need to change this aspect of his personality and will do so. I do not place weight on the fact that he still recognises that there may be more to do. His evidence is that he recognises that he has made a "terrible mistake" and will not wish to repeat it. He is now aware of the consequences of such actions. Although he had committed a serious offence when he was a teenager and, as Mr Lindsay submitted, should have recognised the consequences at that stage, the nature of that offence, being one involving some pre-meditation is very different to the index offence. The Appellant has not committed a further offence of that

nature during the nearly ten years that he was at liberty between terms of imprisonment.

64. I also note the low percentages of risk given in the OASys report. Although I accept that the risk is not negligible, the percentages given are still low.

65. There is an additional difficulty in this case caused by the fact that the Appellant remains in detention and, as such, it is difficult for him to show that he has rehabilitated. He has undertaken some courses whilst in detention aimed at addressing his offending. I accept Mr Malik's submission that the extent of those courses is dictated by what is on offer in the place where the Appellant is detained. I do not give weight to the fact that the Appellant has not undertaken any further courses.

66. I cannot place great weight on the Appellant's personal circumstances (although those are of course relevant to the proportionality of the decision to deport). As I have already noted, the Appellant's offending was not caused by his circumstances. Further, most if not all of the circumstances were in existence at the date of the index offence. However, the stability of the Appellant's personal circumstances is certainly not a negative factor in terms of the threat which he poses. He is in a committed relationship with a British citizen who he plans to marry. He also has a child with whom he has a very strong relationship and who will provide some incentive to him to change his ways. He also has a supportive family in the UK. The Appellant has obtained qualifications whilst in the UK which he will be able to use to his advantage and he may be able to resume his degree course which he had started before the index offence once he is released from detention. Those are all factors which should encourage him to address his behaviour.

67. This is a finely balanced case. However, taking all of the above factors together, I am satisfied that there are not serious grounds to show that the Appellant is a genuine and present threat. I accept that if the threat were to materialise, then it would be sufficiently serious. However, I am satisfied that the Appellant has accepted responsibility for his offending and has shown by his evidence his commitment to ensure that he does not reoffend.

68. In light of that conclusion, I do not need to go on to deal with the proportionality of the decision to deport but I do so for completeness. I have already set out what the factors which would weigh in the Appellant's favour in that regard. However, had I concluded that the Appellant is a genuine and present threat, given the seriousness of the risk should that threat materialise, I would have had no hesitation in concluding that the decision to deport was still proportionate. The Appellant is a young man who is fit and able. He speaks Portuguese. He has qualifications which would assist him in finding work in Portugal. Whilst deportation would or is likely to disrupt the permanence of his relationships in the UK, his partner could, if she chose to, accompany him. His child is cared for by

her mother and could maintain telephone contact and visit the Appellant in Portugal as could the Appellant's other family members.

CONCLUSION

69. For those reasons, the Appellant's appeal succeeds. He cannot show that imperative grounds are required to justify his deportation. However, the Respondent has failed to show that serious grounds exist to justify the Appellant's deportation. He is not a genuine and present threat to public policy and public security.

DECISION

The Appellant's appeal is allowed.

Upper Tribunal Judge Smith
Dated: 7 January 2020

APPENDIX: ERROR OF LAW DECISION

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: DA/00032/2019**

THE IMMIGRATION ACTS

Heard at Birmingham
On 22 August 2019

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

LUIS RAMOS

Respondent

Representation:
For the appellant: Mrs Abone, Senior Home Office Presenting Officer
For the respondent: None

DECISION AND DIRECTIONS

1. The appellant ('the SSHD') has appealed against a decision of the First-tier Tribunal ('FTT') dated 28 May 2019, in which it allowed the appeal of the respondent, an EEA citizen, against a decision dated 7 January 2019 to deport him pursuant to the Immigration (EEA) Regulations 2006.

Issue in dispute

2. The key issue in dispute before the FTT was whether the respondent's integrative links with the UK were broken when he was sentenced to 63 months imprisonment, having been convicted on 16 October 2017 of causing death by dangerous driving.

3. The FTT took the following matters into account as tending to support a break in integrative links: the severity of the offence: the offending was part of an escalating pattern in the area of driving bearing in mind previous offending; following his successful appeal against a decision to deport him as a result of his seven year sentence for manslaughter in 2004, the respondent had been warned in 2007 that if he offended again he would be subject to deportation action.

4. The FTT balanced these factors against matters in favour of the retention of integrative links: a previous 2007 Tribunal found that the respondent had integrated into UK society notwithstanding his offending; his integration between offending had been strengthened by the genuine and subsisting relationship he had with his daughter (who was born in 2010); the respondent had spent a very lengthy period of time (21 years) in the UK from a young age and had no links to Portugal other than an ability to speak the language.

5. The FTT concluded that on balance the respondent had forged integrative links prior to his latest period of imprisonment and the effect of this sentence was not such as to break those integrative links. This meant that the "imperative" grounds applied, and as this high threshold could not be made out, the FTT allowed the appeal.

Appeal to the Upper Tribunal ('UT')

6. In wide-ranging grounds of appeal, the SSHD appealed against the FTT decision, submitting inter alia, that the FTT failed to give adequate reasons for concluding that integrative links had not been broken. The SSHD relied upon B v Land Baden-Wurttemberg; SSHD v Vomero (Cases C-316/16 and C-424/16), [2018] Imm AR 1145 ('Vomero') to support his submission that all relevant matters were not taken into account. The CJEU emphasised that in determining whether integrative links with the host Member State had been broken a holistic assessment must be undertaken and said this at [83]:

> "...the condition of having 'resided in the host Member State for the previous ten years' laid down in that provision may be satisfied where an overall assessment of the person's situation, taking into account all the relevant aspects, leads to the conclusion that, notwithstanding that detention, the integrative links between the person concerned and the host Member State have not been broken. Those aspects include, inter alia, the strength of the integrative links forged with the host Member State before the detention of the person concerned, the nature of the offence that resulted in the period of detention imposed, the circumstances in which that offence was committed and the conduct of the person concerned throughout the period of detention."

7. FTT Judge Osborne granted the SSHD permission to appeal to the UT.

Hearing

8. At the hearing before me there was no appearance by the appellant or his representative on record. My clerk telephoned the representative on record but there was no response and no explanation for the failure to attend.

9. I indicated to Ms Abone that there was an error of law in the FTT's decision (for the reasons I set out below) but that it should be remade by the UT at an adjourned hearing, having given the respondent an opportunity to provide updated evidence. Mrs Abone agreed with this approach.

Discussion

10. I have no hesitation in concluding that the FTT's decision is inadequately reasoned. Although the FTT set out its assessment in relation to some of the relevant factors, it failed to take into account or give reasons for failing to address two relevant matters, as identified at [83] of Vomero: (i) the circumstances in which the 2017 offence was committed and; (ii) the conduct of the respondent during the course of his imprisonment from 2017. These are particularly relevant matters in this case. The 2017 offence was a very serious one that resulted in a lengthy sentence, yet the FTT has not engaged with the circumstances that led the respondent to behave in such an utterly reckless manner that his driving led to the deaths of two people. In addition, the FTT has made no reference to the respondent's behaviour in prison. It is noteworthy that the respondent chose not to attend the hearing and the FTT found that there was no good reason for this. The FTT was obliged to address the circumstances as at the date of the deportation decision but has referred to no evidence addressing the respondent's behaviour in prison from 2017.

11. In addition, the FTT placed considerable weight on the respondent's relationship with his daughter as significantly strengthening his integration but does not address the undeniable consequence of the respondent's imprisonment from 2017: the strength of that relationship had been significantly weakened by the respondent's lengthy imprisonment.

Disposal

12. I have had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I have decided that this is an appropriate case to be remade in the UT, at an adjourned hearing. The fact finding is likely to be limited to the updated evidence as there has been no challenge to the findings of fact made by the FTT.

Decision

13. The FTT decision contains an error of law and is set aside.

14. The decision shall be remade in the UT.

Directions

(1) The respondent shall file and serve all evidence relied upon in a consolidated indexed bundle before 16 September 2019.

(2) The SSHD shall file and serve a position statement two weeks before the hearing.

(3) The hearing shall be listed before any UT judge on the first date after 1 October 2019.

Signed: *UTJ Plimmer*

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
22 August 2019