Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: DA/00260/2019 (V)**

THE IMMIGRATION ACTS

Heard by way of a remote hearing
On 14 July 2021

Decision & Reasons Promulgated
On 05 August 2021

Before

UPPER TRIBUNAL JUDGE REEDS

Between

REDZEP ABDULI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M. Mohzam, instructed on behalf of the appellant
For the Respondent: Mr A. McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction:

1. The appellant appeals, with permission, against the determination of the First-tier Tribunal (Judge Meah) promulgated on 8 January 2020. By its decision, the Tribunal dismissed the Appellant's appeal against the Secretary of State's decisions, dated, 7 May 2019 and 10 June 2019 to deport him from the United Kingdom. The First-tier Tribunal did not make an anonymity order and Mr Mohzam did not seek to advance any grounds as to why such an order would be necessary.

2. The decision to deport was made under Regulation 27 of the Immigration (European Economic Area) Regulations 2016 ("the 2016 Regulations"). The appellant's case was that the decision was not in accordance with Regulation 27 and Schedule 1 of the Regulations, and/or that it was incompatible with his rights under Article 8 of the Convention, and thus unlawful by reason of S.6 of the Human Rights Act 1998.

3. By a decision and reasons promulgated on the 8 January 2020 the FtTJ (Judge Meah) dismissed the appeal, holding that the decision was in accordance with the Regulations as he found that the respondent had established that the appellant represented a genuine, present and sufficiently serious threat to public policy or security such that his deportation was justified. The judge also considered the issue of proportionality of the decision.

4. The Secretary of State appealed and permission to appeal was granted by the First-tier Tribunal (Judge Shimmin) on the 18 February 2020.

5. The hearing took place on 14 July 2021, by means of *Microsoft teams* which has been consented to and not objected to by the parties. A face-to-face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. The advocates attended remotely via video. There were no issues regarding sound, and no substantial technical problems were encountered during the hearing and I am satisfied both advocates were able to make their respective cases by the chosen means.

6. I am grateful to Mr Mohzam and Mr McVeety for their clear oral submissions.

Background:

7. The appellant is a citizen of Slovakia. The key factual background is set out in the decision of the FtTJ, the decision letter and the witness statements filed on behalf of the appellant. The appellant claimed to have entered the United Kingdom in May 2017 and had resided in Ireland since 2011. The respondent considered that the appellant had made no claims regarding his length of residency in the UK, nor had he provided any evidence in support of his residence or that he had been exercising treaty rights in the UK for a continuous period of 5 years.

8. On 8 February 2019 at the Crown Court, the appellant was convicted of attempted burglary (with intent to steal, in a dwelling), burglary and assault by beating, and he was sentenced on 3 separate counts to 12 months imprisonment and ordered to pay a victim surcharge of £140.

9. The sentencing remarks of the Crown Court judge are set out in the respondent's bundle at B1.The circumstances of the offence with that on 6 December 2018 he attempted to break into two households and when he could not enter one, he moved onto the next house which not only did he gain access to, but also assaulted the homeowner. The judge regarded the offences as being serious and that they warranted a custodial sentence. The appellant was given full credit for pleading guilty at the 1st available opportunity. The judge noted that the appellant had no

accommodation and that there were great concerns about him complying with any community sentence in the absence of any home.

10. On 16 February 2019, the appellant was served notice that he was liable for deportation and invited to make any representations as to why this should not take place. He provided representations on the 4 March 2019. the A deportation order was signed on the 1 May 2019. He was removed from the United Kingdom after the deportation order was signed and the appellant applied for revocation of the deportation order by way of making representations via his solicitors on his behalf. Consideration was given to those representations, but the respondent refused those representations in a supplementary decision letter of 20 June 2020.

11. The decision letter began by considering his residence noting that he had made no claim regarding his length of residence within the UK and had not provided any evidence in support to show that he had been exercising treaty rights in the UK for a period of 5 years continuously. Thus it was not accepted he had been resident in the United Kingdom in accordance with the EEA regulations 2016 for a continuous period of 5 years thus did not require a permanent right to reside in the UK. Consideration was therefore given to whether his deportation was justified on grounds of public policy or public security.

12. The respondent undertook an assessment of threat and consideration was given to the principles set out in regulation 27 (5). The decision set out the appellant's criminal history as recorded above. It was considered that the circumstances of the offences which included burglary were serious offences with long-term consequences for the victims. The offence of assault by beating was the type of conduct whereby a victim would have suffered physically to some degree as a result as it can leave victims feeling fearful of violence.

13. The respondent was of the view that there was no evidence that the appellant recognised the effect of his offending behaviour on others. Whilst it was recognised that he did not have an extensive criminal record, the respondent took the view that the serious harm which would be caused as a result of any similar instances of offending was such that it was not considered reasonable to leave the public to be vulnerable to the potential of him reoffending

14. The respondent also considered that the nature of the offences suggested that he was unable to support himself in United Kingdom without resorting to criminal activities. The sentencing judge had referred to the appellant as having "no accommodation" and the appellant had provided no evidence that his circumstances had changed and that as he had no fixed accommodation he would have no prospect of lawful employment upon release from prison.

15. As to the nature of the offences, the respondent considered that they showed that he had a potential to act violently and that there was no indication that he shown any remorse for his offending or that he had any recognition of the impact that his behaviour may have on others.

16. The respondent noted that he had not stated whether or not he had attended any offence related courses whilst in custody but in any event the respondent was of the view that attendance of such courses in a custodial environment did not in itself rehabilitate an offender or guarantee that the risk of reoffending would reduce after release. In his case there was insufficient evidence that he had adequately addressed the reasons for his offending behaviour. On the available evidence it indicated he had a propensity to reoffend and thus represented a genuine, present and sufficiently serious threat to the public to justify his deportation on grounds of public policy.

17. In terms of proportionality, the decision letter took into account his age of 37 years and his nationality and that he did not have any medical issues. He made no claim as to when he 1st arrived in the UK and had not provided any evidence of length of residence or of exercising treaty rights in accordance with the regulations.

18. As to his claim that his family were living in United Kingdom, no evidence had been provided in support of this. It was considered that he spent his formative years in Slovakia and that he would have completed his education to at least secondary level there. It was also considered that he would have developed social relationships with others in Slovakia during the time he resided there and may have family members.

19. As the appellant had no accommodation it was considered without such he had no claimed family life and upon return to Slovakia he could take advantage of options available and support from family members to improve his personal situation. It was considered that he would be able to use any work experience, skills and qualifications acquired in the United Kingdom to obtain employment in Slovakia to support himself. Thus, he had not demonstrated that he could not survive economically given his particular circumstances, taking into account his language, knowledge, educational skills, age and life experiences, family, health and assets on return to Slovakia. There was no evidence to suggest he was now in a position where he was stranger to Slovakia to the extent that reintegration into private life in that country would amount to undue hardship.

20. As to the issue of rehabilitation the respondent cited the decision in Essa [2012] EWCA Civ 1718 but there was no evidence that he had undertaken any rehabilitative work while in custody. He had not made a claim as a length of residence within the UK and demonstrated no significant integration into the community of the UK. He provided no evidence of being engaged in any regular or lawful employment and no evidence of a support network to aid rehabilitation. Therefore the respondent concluded that there was no reason why he could not work towards rehabilitation in Slovakia with the support of family members living there and that he did not need to remain in the United Kingdom to become rehabilitated.

21. Having regard to all the available information, it was concluded that deportation to Slovakia would not prejudice the prospects of rehabilitation and that any interference to it would be proportionate and justified when balanced against the continuing risk he posed to the public.

22. It was concluded that there was a real risk that he may reoffend and therefore it was considered that his deportation was justified on grounds of public policy, public security, or public health in accordance the regulation 23 (6) (b). His personal circumstances had been considered but given the threat posed, the decision to deport was proportionate and in accordance with the principles of regulations 27 (5) and (6).

23. At paragraphs 43 – 52 the decision letter addressed additional matters relevant to Article 8 of the ECHR.

24. A supplementary decision letter was served on the 20 June 2019 as a result of further submissions dated 10 June 2019.

25. As to residence, the appellant claimed to have arrived in the UK in May 2017 and resided in Ireland since 2011 but he provided no evidence of arrival in the UK or any documentary evidence of continuous residence in the UK. As such the length of residence of 2 years meant that the appellant did not acquire a permanent right of residence under the EEA regulations and therefore the decision was maintained that his deportation was considered justified on grounds of public policy or public security.

26. As to the issue of proportionality, the appellant claimed that he was living in Ireland between November 2011 and May 2017. He claimed to have been away from Slovakia 8 years. However he provided no evidence of residence in Ireland and the birth certificate of his child demonstrated that he was born in Ireland in March 2017 and he was married in Cardiff in January 2017. This was not sufficient evidence of residence outside of Slovakia.

27. Even if it been accepted that he spent his time in Ireland it would still be considered that it spent 30 years in Slovakia prior to that as such there was no evidence to suggest that he was now in a position of being a stranger from Slovakia to the extent that reintegration into private life in that country would amount to undue hardship. He was of an age where it was considered reasonable to expect him to be responsible for himself.

28. As to the issue of rehabilitation, the appellant claimed had been working on drug and alcohol issues. Whilst it was accepted that the medical records provided support for the issues he claimed to have, he had not provided evidence that he completed any offence related courses. Thus the view was taken that there was no reason why he could not work towards rehabilitation in Slovakia.

29. At paragraphs 16 – 35 the respondent considered the appellant's family life with his child born in March 2017. The appellant had provided a birth certificate, a British passport copy for the child and photographs. It was accepted that his child was under the age of 18 and was a British citizen. It was further accepted that he had a genuine subsisting parental relationship with the child as he had provided evidence that he was residing in the same house as the child. It was accepted that it would be unduly harsh for the child to live in Slovakia. The evidence from the appellant solicitors stated that the marriage between the appellant and his ex-wife had broken

down and that they were no longer in a subsisting relationship. She was the primary carer for the child and given that they were no longer in a relationship it was considered that it would be unduly harsh for her to have to relocate to Slovakia. However it was not accepted that it would be unduly harsh for the appellant's child to remain in the United Kingdom even though the appellant was to be deported. The evidence provided indicated that the child was in the care of his mother and that he was no longer in a relationship with his ex-partner. There was no evidence that the child had suffered any detrimental effect due to his separation from the appellant since his imprisonment. Nor had the appellant provided evidence to show that his presence United Kingdom was needed to prevent his child from being ill-treated, or that his health or development would be impaired, or the child's care being other than safe and effective. It was acknowledged that the appellant's absence would result in some negative emotional impact but as the child continued to live with his mother who would support him, he would adapt to life without face-to-face contact and would continue to attend school where he would have the stability and support necessary to complete his education. It was further concluded that with the permission of his primary carer, the appellant's child would be to maintain contact via modern methods of communication and visits to Slovakia. Thus there was no evidence that the deportation would result in his child losing all contact with him.

30. Consequently it was not accepted that he met the requirements of the Exception to deportation on the basis of family life with a child and would not be a breach of article 8.

31. As he was no longer in a relationship with his former wife it was concluded that he had no family life with his partner. It was further concluded that there were no very compelling circumstances and that any treatment he was currently receiving could take place in Slovakia.

The decision of the First-tier Tribunal:

32. The appellant appealed the decisions, and the appeal came before the FtTJ on 6 January 2020. The appellant had been allowed temporary admission into the UK to attend and participate in the hearing and thus gave evidence before the FtTJ.

33. At paragraphs [9 – 39] the FtTJ set out his analysis and assessment. The FtTJ summarised the arguments relied upon by the appellant. Firstly that he did not pose a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society which required his deportation from the UK and that he had no past convictions and he had taken steps to address his criminal behaviour which had been fuelled by drug and alcohol addiction. Secondly it was argued that the decision to deport was not proportionate given the appellant's subsisting relationship with his British child.

34. In relation to the first argument, the judge reached the conclusion on the evidence that the appellant still posed a present, genuine sufficiently serious risk and that this was only being "curbed" directly by the help he received in Slovakia as he had stated

and as the judge had set out at paragraphs [18 –19]. The judge found that there was no structured assistance set up for him in the UK and that it is likely to take some time for such a system to be put in place if he accepted the claim that his criminal behaviour was necessarily linked his addictions. The judge also found that the evidence demonstrated that the appellant would during any such period whilst he was waiting to access any appropriate help and treatment pose an immediate threat as described in regulation 27 (5) (at [23]).

35. At [24] the judge made reference to the sentencing remarks and that the judge had stated that whilst he was in custody had access to services and facilities, but it may be difficult for him to access it in the community. The judge found that he also agreed with those observations as there was no evidence before him that the appellant would be able to access any appropriate services if he was allowed back into the UK. Furthermore, he had not engaged in any formal rehabilitation such as counselling and/or appropriate courses to address his criminal behaviour which he claimed was all down to his drug and alcohol addiction. The judge found there was no direct or actual evidence apart from the appellant's own claim to confirm that one was necessarily corollary to the other.

36. The judge stated at [26] that even if he accepted the appellant's claim at face value, there was insufficient evidence before the tribunal to show that the appellant did not pose a genuine and present threat. The appellant claimed that he wished to speak to his medical practitioner in Slovakia to see if the daily methadone doses could be lowered however there was no evidence of that nor any suggestion by any professional organisation including those helping the appellant in Slovakia to indicate that the lowering of his daily methadone doses was either in the pipeline or even a realistic consideration for him.

37. The judge therefore concluded that the appellant had not overcome his addictions to drugs and alcohol which he claims accounted for his criminal offending behaviour and that he is now reliant entirely on methadone to manage it. The judge found that was insufficient to alleviate the risk he continued to pose (at [27]).

38. In relation to the claim that he had rapidly accessed all the appropriate services upon return to Slovakia after his deportation from the UK and the progress he had made by renting his own flat in Slovakia and obtaining full-time employment the judge found were all contingent on the assistance he was receiving from the professional services in Slovakia.

39. At [28] the judge referred to paragraph 29 of the decision in SSHD v Dumliauskas and ors [2015] EWCA Civ 145 which had been relied upon by the appellant's representative. The judge stated that the appellant in his appeal was not suffering from any mental health conditions and found in fact the opposite was true and that the claimed rehabilitation he was receiving in Slovakia appeared to be working if that was accepted at face value and it was that it had enabled him to obtain employment and rent his own accommodation. The appellant had the support of his sister and mother who lived very close by and therefore the judge concluded to take

the appellant out of that existing setup where he would not have immediate access to any comparable support in the UK, would destabilise the claimed progress he was making, and this would have the "concomitant effect of him becoming an immediate risk to the fundamental interests of the society here as envisaged in regulation 27 (5)".

40. At [30] the judge rejected the appellant's account that there was a potential for him and his wife to reconcile. The judge attached little weight to this claim in the light of there being no evidence to confirm such a reconciliation from his wife. He concluded that this was an embellishment to bolster his claim against his deportation.

41. Dealing with the second argument advanced on behalf of the appellant which related to his relationship with his child, the judge took into account that the appellant's child was a British citizen and that it was conceded that the appellant had a genuine and subsisting relationship with him. The appellant accepted that the child's mother was his primary carer and that regular contact had been maintained with the child by calls via the Internet and that the child and his former partner visited the appellant in Slovakia in September and December 2019 and stayed at the appellant's mother's home although the appellant stayed in a separate room given that they were separated.

42. Against that background, the judge found that was entirely reasonable and proportionate to the appellant to continue to maintain contact with his child in the manner that he had been doing since his deportation from the UK. There was nothing to stop the appellant's ex-partner from continuing to take the child to Slovakia to see him as and when feasible and that the appellant could pay for such trips in the same way that he had done so during the most recent trip at Christmas 2019. The judge found that the appellant had both the resources and familial support from his mother who would also play a part in accommodating such visits in the future as she had done so in the past.

43. The judge concluded that the child's best interests were to remain with his mother in the UK and the status quo to be maintained of his mother to remain as his primary carer and that there was "no suggestion to the contrary".

44. The judge concluded at [35] that the fundamental interests of society were outweighed by far by any claim the appellant may have based on his subsisting relationship with his child and this, the judge found, required his deportation to remain in place.

45. The judge considered other relevant matters when considering the proportionality of the decision. In respect of the appellant's nationality and length of residence, he found that the appellant was born and raised in Slovakia and moved to Ireland approximately 7 years ago before coming to live in the UK in 2017. He had been educated to secondary school level in Slovakia and he had family members such as his mother and sister living there. He had obtained his own accommodation and full-time employment there. The judge contrasted his ties in Slovakia with those in the

United Kingdom and concluded that he had no other real connection with the UK apart from his former spouse from whom he was separated and a British child for whom he was not the primary carer.

46. At [37] the judge found that there was "no evidence before me of any tangible integration of any kind by the appellant into the culture and/or society in the UK, and the evidence shows that since coming to the UK in 2017, the majority of his time spent pursuing his illegal heroin habit and alcohol addiction, which he said then led to the serious crimes committed culminating in a conviction prison sentence." The judge found that spoke for itself and was against any notion of "cultural integration into UK society".

47. Against that background that the FtTJ concluded that the appellant's real ties and connections were significantly in Slovakia and this was evidenced by the way which he was very quickly able to integrate back into society following his deportation from the UK in all respects especially in relation to accessing professional service there to deal with his addictions and then to secure his own accommodation and full-time permanent employment there. The judge contrasted that with the position in the UK at [39] where he noted that the appellant had made no such progress in the UK after coming here from Ireland in 2017 and that his entire time was spent engaging in illegality (illicit drugtaking and then the burglary/beating for which was convicted) and then being imprisoned before being deported. The judge stated "I find that this evidence speaks volumes and it confirms in my view that if the appellant is genuinely on the path to managing his addictions, then Slovakia is the best place for him to be to achieve this rather than in the UK, where I find there is a very strong and real possibility that he will engage in behaviour akin to that when he was here previously, and this therefore means that he will therefore pose the necessary threat to society as set out in regulation 27 (5)." The FtTJ therefore found that the decision to deport the appellant was proportionate in all respects.

<u>The applicable legal framework:</u>

48. The appellant is an EU citizen. Under Article 20 of the Brexit Withdrawal Agreement the conduct of EU Citizens, their family members, and other persons, who exercise Citizens' rights under the Withdrawal Agreement, where that conduct occurred before the end of the transition period, 31 December 2020, shall be considered under the provisions of Directive 2004/38/EC which gives effect to the free movement of persons. This means that in this appeal it is the EU standards and not the UK standard that applies to any decision to deport, which are more favourable to Mr Abduli than those applying under UK law.

49. The deportation of EEA nationals is subject to the regime set out in the Immigration (European Economic Area) Regulations 2016 ('The EEA Regulations') which were made under section 2 of the European Communities Act 1972 by way of implementation of Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of Member States. The

Directive sets conditions that must be satisfied before a Member State can restrict the rights of free movement and residence provided for by EU law.

50. By virtue of Regulation 23(6) of the 2016 regulations 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:

> (a) that person does not have or ceases to have a right to reside under these Regulations; or
>
> (b) the Secretary of State has decided that the person's removal is justified on the grounds of public policy, public security, or public health in accordance with regulation 27; or
>
> (c) the Secretary of State has decided that the person's removal is justified on grounds of misuse of rights under regulation 26(3).

Regulation 27 of the EEA Regulations provides as follows: -

> '**27.** - (1) In this regulation, a "relevant decision" means an EEA decision taken on the grounds of public policy, public security, or public health.
>
> (2) A relevant decision may not be taken to serve economic ends.
>
> (3) A relevant decision may not be taken in respect of a person with a right of permanent residence under regulation 15 except on serious grounds of public policy and public security.
>
> (4) A relevant decision may not be taken except on imperative grounds of public security in respect of an EEA national who-"
>
> > (a) has resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision; or
> >
> > (b) is under the age of 18, unless the relevant decision is in the best interests of the person concerned, as provided for in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989
>
> (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 concerned 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.).

SCHEDULE 1

51. CONSIDERATIONS OF PUBLIC POLICY, PUBLIC SECURITY AND THE FUNDAMENTAL INTERESTS OF SOCIETY ETC.

Considerations of public policy and public security

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

Application of paragraph 1 to the United Kingdom

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

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

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

(a) the commission of a criminal offence.

(b) an act otherwise affecting the fundamental interests of society.

(c) the EEA national or family member of an EEA national was in custody.

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

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

(a) entering, attempting to enter, or assisting another person to enter or to attempt to enter, a marriage, civil partnership, or durable partnership of convenience; or

(b) fraudulently obtaining or attempting to obtain or assisting another to obtain or to attempt to obtain, a right to reside under these Regulations.

The fundamental interests of society

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

(a) preventing unlawful immigration and abuse of the immigration laws and maintaining the integrity and effectiveness of the immigration control system (including under these Regulations) and of the Common Travel Area.

(b) maintaining public order.

(c) preventing social harm.

(d) preventing the evasion of taxes and duties.

(e) protecting public services.

(f) excluding or removing an EEA national or family member of an EEA national with a conviction (including where the conduct of that person is likely to cause, or has in fact caused, public offence) and maintaining public confidence in the ability of the relevant authorities to take such action.

(g) tackling offences likely to cause harm to society where an immediate or direct victim may be difficult to identify but where there is wider societal harm (such as offences related to the misuse of drugs or crime with a cross-border dimension as mentioned in Article 83(1) of the Treaty on the Functioning of the European Union).

(h) combating the effects of persistent offending (particularly in relation to offences, which if taken in isolation, may otherwise be unlikely to meet the requirements of regulation 27).

(i) protecting the rights and freedoms of others, particularly from exploitation and trafficking.

(j) protecting the public.

(k) acting in the best interests of a child (including where doing so entails refusing a child admission to the United Kingdom, or otherwise taking an EEA decision against a child).

(l) countering terrorism and extremism and protecting shared values."

The appeal before the Upper Tribunal:

52. In the light of the COVID-19 pandemic the Upper Tribunal issued directions, inter alia, indicating that it was provisionally of the view that the error of law issue could be determined without a face-to-face hearing and that this could take place via Skype. Both parties have indicated that they were content for the hearing to proceed by this method. Therefore, the Tribunal listed the hearing to enable oral submissions to be given by each of the parties.

53. Before the Upper Tribunal, the appellant was represented by Mr Mohzam and the Secretary of State was represented by Mr McVeety

54. Mr Mohzam relied upon the grounds as drafted. The written grounds seek to challenge the assessment of whether the appellant represented a genuine, present and sufficiently serious threat to one of the fundamental interests of society.

55. It is submitted that the appellant did not have any past convictions and had not committed any further offences. At paragraph [20] the judge stated that the appellant would become a threat if he stopped taking methadone to cope with his drug habit and at [21] the judge further accepted that the appellant had taken proactive steps to address his drug and alcohol addiction. At [22] the judge stated he must continue with a structured help he was receiving in his home country in an effort to deal with his offending behaviour and that at [23] he had not reoffended because of the help received in Slovakia which he had sought out himself. As the judge accepted that the appellant's behaviour was linked to his addictions, the judge failed to conclude that the appellant did not represent a genuine, present and sufficiently serious threat due to his addiction being managed.

56. The written grounds submit that the reasons for dismissing the appeal was that there was a risk of future offences if he stopped taking treatment for his addiction, but the judge had failed to conclude that in the light of his own findings with the treatment the appellant received, he did not pose a present, genuine sufficiently serious risk to the public policy in accordance with regulation 27.

57. The judge found that the appellant would only pose a risk if he ceased the treatment he received therefore the judge had made a decision that he posed such a risk on the assumption that his treatment would be stopped.

58. In the light of that finding the judge had not set out how the appellant's personal conduct represented such a sufficiently serious risk when the judge stated it is based on a future possibility and not the present.

59. Mr Mohzam submitted that the FtTJ's use of the word "if" at paragraph [20] indicated that his assessment was speculative and that the judge was assuming that if he came off methadone or cease treatment he would be a risk to the public. However the appellant's evidence was that he had obtained support in Slovakia on his own basis. He submitted the judge had not taken into account the appellant's personal conduct by returning to Slovakia and undertaking treatment to deal with his addiction. The risk is a future risk if he came off the treatment and therefore was not a certainty. Given that the appellant had taken all necessary steps to rehabilitate himself to change, the judge had not made a proper finding on this.

60. In his oral submissions Mr Mohzam also submitted that the judge made an error at [39] where he stated that the appellant had made no progress in the UK and that his "entire time here was spent engaging in illegality". He submitted that the finding that he had been involved in illegal activities was not made out in the judge had failed to consider that his present conduct represented a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. The appellant had only committed one offence and by his conduct he had shown he had been rehabilitated. He therefore invited me to find that the judge had made a material error of law.

61. Mr McVeety relied upon the written submissions dated 7 June 2020 which had been sent to the Tribunal as a response to the directions sent to the parties.

62. In addition he submitted that contrary to the appellant submissions, regulation 27 (5) (c) made reference to "taking into account past conduct of the person and that the threat does not need to be imminent". He submitted that often it was argued on behalf of an appellant that deportation would be disproportionate because it would increase the risk of offending as a result of rehabilitative progress in the UK. Here the appellant's own evidence was that the offending was due to addiction to drugs and alcohol which he had not addressed whilst in the UK from 2017 and had gone on to be convicted of offences as a result. The appellant's own evidence was that the offending was due to his addiction. He was undertaking treatment by taking methadone in Slovakia. The FtTJ found that if he had stopped taking the methadone or ceased the treatment, he would pose a genuine and sufficiently serious threat or risk and that this was not speculative but was based on the appellant's own evidence. The judge was entitled to take into account his previous past conduct and his own evidence which demonstrated that his offending was due to his addiction. It was therefore open to the judge to find that there was a likelihood of reoffending and this was not based on any speculation but on the evidence. The appellant had not engaged previously, and all treatment had been undertaken in Slovakia. There was no error of law in the assessment made by the FtTJ in the light of the evidence that was before him.

Ground 2:

63. The second ground relates to the appellant's consideration of family life with his son. It is submitted that the judge failed to consider the appellant and his son's article 8

rights in line with sections 117A-D regarding whether it will be unduly harsh on his son for his father to be deported (see Badewa (S117A-D and EEA Regulations) [2015] UKUT 329).

64. It is submitted that the judge failed to consider the best interests of the child and whilst brief references were made there was no detailed analysis of the impact on the minor child. The best interests of the child were to be considered independently of his parents (reference is made to paragraph 23 of KO (Nigeria).

65. In his oral submissions Mr Mohzam submitted that the FtTJ failed to consider the relationship between the appellant and his child and that a fundamental error was his failure to consider the issue of undue harshness (see KO(Nigeria) and HA (Iraq). He submitted that the consideration depended on the individual circumstances of the child and that it was important to look at the impact upon the relevant child, but the judge had failed to do so.

66. Mr McVeety relied upon the written submissions. He further submitted that the factual findings made by the judge as set out on his decision had not been challenged in the grounds. Whilst the appellant had a genuine and subsisting parental relationship with his child it was necessary for there to be at least some evidence to demonstrate the impact or circumstances upon the relevant child. Here there was no such evidence and whilst it was argued that it would be disproportionate for the child to be away from his father, this was not supported with any evidence individual to the child.

67. He further submitted that the judge dealt with the relationship between the appellant and his son in the decision under the heading "proportionality" and that there had been no evidence to show that the consequences of deportation would be unduly harsh. The child was still in contact with his father and remained in the primary care of his mother which was the point that the judge was entitled to take into account. He submitted that any assessment had to be fact-based and there was no evidence to show any unduly harsh consequences. Thus the findings made were open to the judge in light of the lack of evidence.

Conclusions:

Ground 1:

68. I am grateful for the submissions made by each of the advocates. I confirm that I have taken them into account and have done so in the light of the decision of the FtTJ and the material that was before him.

69. Dealing with ground 1, as the appellant has not exercised treaty rights for a continuous period of five years, the regulations give only the lowest level of protection against removal. Nevertheless, the appellant cannot be deported unless his personal conduct represents "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. This is set out at regulation 27(5)(c).

70. In this context, the grounds seek to challenge the assessment made by the FtTJ.

71. In Arranz (EEA regulations - deportation -test) *[2017] UKUT 294* the Upper Tribunal held that the burden of proof lay on the SSHD to prove that a person represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. That the burden of proof lies on the SSHD has recently been accepted by the Inner House of the Court of Session in *SA v SSHD [2018] CSIH 28*. The person concerned must also be a present threat, Orphanopoulos and Oliveri v Verwaltungsgericht Stuttgart, [2004] ECR 1999 and previous convictions are relevant:

> "*Only insofar as the circumstances which gave rise to that conviction are evidence of personal conduct constituting a present threat to the requirements of public policy*".

72. In accordance with the provisions the FtTJ was required to consider the personal conduct of the appellant and whether his personal conduct represented a genuine and presently sufficient threat affecting one of the fundamental interests of society. As the respondent submits, whilst the regulations refer to a "present" threat, it does not need to be imminent and past conduct of the person is also a matter to take into account although the conviction itself does not justify the decision to deport.

73. In his decision, the FtTJ was plainly aware that the decision to deport the appellant may not be taken except on grounds of public policy or security and that as a consequence he was required to identify those relevant factors and evaluate them as to their seriousness.

74. In this assessment the FtTJ was required to consider whether there was a risk of the appellant reoffending. Whilst the grounds assert that the judge has not set out how the appellant's personal conduct presented a sufficiently serious risk, in my view that is not borne out by the decision.

75. He properly analysed the evidence that was before him. Beginning with the offence at [14] the judge found that the appellant had been convicted of a "very serious crime" that it is including the beating of another person whilst committing a burglary. The judge took into account that the appellant had no previous convictions.

76. There was no evidence from the probation service or OASys's report nor was there any evidence from those whom the appellant stated were concerned with his treatment in Slovakia. This was important as reference to the prospects of rehabilitation concerned the reasonable prospects of the person ceasing to commit crime not the mere possibility of rehabilitation and the FtTJ was entitled to find that the evidence was limited in this regard.

77. The risk identified by the FtTJ was a continuation of his offending as a result of his dependence upon heroin and also his alcohol dependency which had been the

appellant's previous conduct and which the appellant himself had claimed had given rise to his offending behaviour in the UK.

78. This was not based on any speculation on the part of the judge but was based on the appellant's own evidence and are set out in the notes he told the probation service that he had been using heroin since a teenager (at page 70).

79. On his assessment of the appellant's evidence, the FtTJ found that the appellant was still reliant upon methadone for his drug addiction and that whilst the appellant claimed to be seeking to lessen the dose, that had not been evidenced and in the judges view was not a "realistic consideration" (at [26]).

80. Whilst Mr Mohzam submits that the use of the word "if" was speculative and that the judge simply assumed that he would be a risk the public is not an accurate reflection of the FtTJ's reasoning.

81. The judge was entitled to take into account that if the appellant did not take methadone this would lead to an immediate or genuine risk of the appellant reoffending given that it was the appellant's evidence that it was the addiction to drugs which had led him commit the burglaries to obtain money to fund his drug addiction. As the judge found he was wholly reliant on methadone and had not overcome his addiction to drugs (at [26]-[27]) and that the appellant still posed a present and genuine and sufficiently serious risk and that it was only being "curbed" due to the treatment in Slovakia.

82. The FtTJ found that the treatment he described was of a structured type and that no such assistance of the type was set up in the UK and that it was likely to take time for such assistance. The judge was entitled to take into account this period where there was no comparable treatment available and that it would likely lead to the appellant posing a risk to the public. It had not been the case that there had been any prolonged period of compliance with treatment, and it does not appear that there was any evidence put before the judge from those treating the appellant to give any idea of the progress he had made, any future prognosis or any reduction in risk. One of the fundamental interests of society the judge is required to consider is that set out in schedule 1 (7) (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)".

83. Furthermore for the purposes of his assessment, the FtTJ was entitled to take into account at [29] that for the appellant to leave the stability that he had in Slovakia which not only included the treatment but also the support of close family members would have had the effect of destabilising any progress he was likely to make and would have the effect of him becoming an immediate risk to society. I agree with submission made on behalf of the respondent that in light of the requirement under regulation 27 (5)(c) to take into account "past conduct of the person and that the

threat does not need to be imminent", that there was evidently a sufficient nexus between personal conduct and a risk that would arise as soon as the appellant returned to the UK without immediate treatment.

84. Whilst a person's previous convictions do not in themselves justify the decision to deport in carrying out his assessment, in my judgement the FtTJ properly had regard to the offences themselves and the appellant's past conduct including his drugtaking (including his addiction to heroin) which the FtTJ found had been carried out throughout his short residence in the UK which had been the catalyst for his offending and the FtTJ addressed and assessed the risks of reoffending in the light of the evidence as a whole which included the appellant's evidence of treatment he was undergoing in Slovakia. It was open to the judge to conclude that the appellant had not demonstrated that he had overcome his addiction to drugs and alcohol which accounted for his offending behaviour and was entirely reliant on methadone and that this was insufficient to alleviate the risk of harm that he continued to pose to the public.

85. In summary, the public policy grounds for removal are an exception to the fundamental principles of the free exercise of EU rights and as such an EU citizen should not be expelled as a deterrent to others without the personal conduct of the person concerned giving rise to consider that he will commit other offences that are against the public policy of the state.

86. It must be established that the Appellant represents "a genuine, present or sufficiently serious threat affecting one of the fundamental interests of society". In this context I am satisfied that the FtTJ properly considered the future risk of reoffending and did so in the light of all the evidence before him.

87. As set out in the decision of SSHD v Straszewski [2015] EWCA Civ 1245 at paragraph [25], it required an evaluation to be made of the likelihood that a person concerned would offend again and the consequences if he did so. In addition, the need for the conduct of the person concerned to represent a "sufficiently serious" threat to one of the fundamental interests of society required the decision maker to balance the risk of future harm against the need to give effect to the right of free movement. This was the evaluation carried out by the FtTJ.

88. A finding as to whether the conduct of the appellant represents a genuine, present, and sufficiently serious threat is a prerequisite for the adoption of an expulsion measure and it is only upon such a threat being established, that the issue of proportionality arises. As Mr McVeety submitted it was open to the FtTJ to conclude that there was sufficient evidence before him to reach the judgement that the appellant presented a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Whilst a different judge may have reached a different conclusion as to whether he was a present threat, I am satisfied that the judge did consider the regulations correctly and made a careful assessment of the evidence.

Ground 2:

89. Mr Mohzam has submitted that the FtTJ erred in law by failing to consider the appellant and his son's family life under article 8 and in particular that he did not do so by reference to section 117A-D. Whilst the section is highlighted in the grounds the submissions made were only directed to S117C (5) and whether it would be unduly harsh for the appellant's child in the light of the appellant's deportation . It has not been suggested in the grounds or in any oral submissions that any other section was relevant to the appellant's circumstances.

90. Under S117C(5) of the NIAA 2020 applies that where C has a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the child would be unduly harsh. As is accepted by both advocates, it was not in dispute before the FtTJ that the relevant child was a British citizen and therefore a "qualifying child" for the purposes of section 117C (5). Nor was it in dispute that the appellant had a genuine and subsisting parental relationship with his child.

91. The position taken by the respondent was set out in the decision letter of 20 June 2020 and that whilst it was accepted that it would be unduly harsh for the appellant's child to live in Slovakia (at paragraph 25), it was not accepted that it would be unduly harsh for his child to remain in the United Kingdom even though the appellant was to be deported. At paragraphs 29 – 33, the respondent set out the reasons for that assessment based on the evidence that had been provided by the appellant. It indicated that the appellant's child in the care of his mother and that the appellant and his partner were no longer in a relationship. There was no evidence that his child had suffered any detrimental effect due to the separation from him since his imprisonment and that the appellant had not provided any evidence to show that his presence in the United Kingdom was required to prevent his child from being ill-treated, the child's health or development being impaired or his care being other than safe and effective. It had been acknowledged that his absence would result in some negative emotional impact on him, but he would continue to live with his mother who would support him who was his primary carer. The respondent considered that he would be able to maintain contact with his child via visits and that there was no evidence that the deportation of the appellant would result in his child losing all contact with him. There had been no evidence that they would be unable to visit Slovakia.

92. It is acknowledged in the respondent's written submissions and those given by Mr McVeety that the FtTJ did not expressly set out section 117C(5) in his decision at paragraphs [31]-[35] and [36]. However, the FtTJ undertook an analysis of the evidence relevant to the appellant's child and s55 (best interests) at paragraph [34] under the heading of "other matters and proportionality".

93. It is also submitted on behalf of the respondent that it was unclear whether the appellant's case had been argued on the basis that his deportation would lead to unduly harsh consequences for his child and what had been recorded by the judge at [17] was that the case for the appellant was argued on the basis that "the decision to

deport was not proportionate given the appellant's subsisting relationship with his British child." That would be consistent with the assessment made by the judge at paragraphs 31 – 35 and 36. I also observe that at paragraph [41] the FtTJ stated that he found the decision letters contained a "detailed and extensive analysis of all the available evidence put to the respondent to support the appellant's claim against deportation, and this is fully and appropriately reasoned, and I uphold the content of those letters. I find the decision to deport is entirely proportionate". The reference at paragraph 41 demonstrates that the FtTJ agreed with the assessment of proportionality set out by the respondent and which the FtTJ considered. This included the assessment made of S117C (5) and the issue of undue harshness.

94. I have nonetheless considered the assessment undertaken by the FtTJ. The appellant in his evidence accepted that the child's mother was his primary carer and that regular contact had been maintained with the child by calls via the Internet and that the child and his former partner visited the appellant in Slovakia in September and December 2019 and stayed at the appellant's mother's home although the appellant stayed in a separate room given that they were separated.

95. Against that background, the judge found that was entirely reasonable and proportionate for the appellant to continue to maintain contact with his child in the manner that he had been doing since his deportation from the UK. There was nothing to stop the appellant's ex-partner from continuing to take the child to Slovakia to see him as and when feasible and that the appellant could pay for such trips in the same way that he had done so during the most recent trip at Christmas 2019. The judge found that the appellant had both the resources and familial support from his mother who would also play a part in accommodating such visits in the future as she had done so in the past.

96. The judge concluded that the child's best interests were to remain with his mother in the UK and the status quo to be maintained of his mother to remain as his primary carer and that there was "no suggestion to the contrary".

97. None of those findings of fact have been challenged in the grounds. Whilst the FtTJ accepted that the appellant had a genuine and subsisting parental relationship with his child that would be, by itself, insufficient to demonstrate that the effect upon the child would be "unduly harsh".

98. Whilst Mr Mohzam made reference to KO(Nigeria) and HA (Iraq) I was not taken to any particular paragraphs of those decisions.

99. The decision of the Supreme Court in KO(Nigeria) and others v SSHD [2018] UKSC sets out that the assessment of whether the impact upon a qualifying child or partner is "unduly harsh" focuses solely upon the consequences for, and impact upon, those family members irrespective of the seriousness of the offence or public interest (at [32]).

100. Also in KO (Nigeria), Lord Carnwath, with whom the other members of the Supreme Court agreed, explained the nature of the test of undue harshness:

> "23 On the other hand the expression "unduly harsh" seems clearly intended to introduce a higher hurdle than that of "reasonableness" under section 117B(6), taking account of the public interest in the deportation of foreign criminals. Further the word "unduly" implies an element of comparison. It assumes that there is a "due" level of "harshness", that is a level which may be acceptable or justifiable in the relevant context. "Unduly" implies something going beyond that level. The relevant context is that set by section 117C(1), that is the public interest in the deportation of foreign criminals. One is looking for a degree of harshness going beyond what would necessarily be involved for any child faced with the deportation of a parent. What it does not require in my view (and subject to the discussion of the cases in the next section) is a balancing of relative levels of severity of the parent's offence, other than is inherent in the distinction drawn by the section itself by reference to length of sentence…"

101. The decision of the Court in HA (Iraq) underlined that what is required in all cases is an informed evaluative assessment of whether the effect of deportation on a child or partner would be unduly harsh in the context of the strong public interest in the deportation of foreign criminals. The leading judgment of Underhill V-P contains these passages:

> "51 … The underlying question for tribunals is whether the harshness which the deportation will cause for the partner and/or child is of a sufficiently elevated degree to outweigh that public interest in the deportation of foreign criminals."
>
> "53 … It is inherent in the nature of an exercise of the kind required by section 117C(5) that Parliament intended that tribunals should in each case make an informed evaluative assessment of whether the effect of the deportation of the parent or partner on their child or partner would be "unduly harsh" in the context of the strong public interest in the deportation of foreign criminals; and further exposition of that phrase will never be of more than limited value."
>
> "56 … if tribunals treat the essential question as being "is this level of harshness out of the ordinary?" they may be tempted to find that Exception 2 does not apply simply on the basis that the situation fits into some commonly-encountered pattern. That would be dangerous. How a child will be affected by a parent's deportation will depend on an almost infinitely variable range of circumstances and it is not possible to identify a baseline of "ordinariness". Simply by way of example, the degree of harshness of the impact may be affected by the child's age; by whether the parent lives with them (NB that a divorced or separated father may still have a genuine and subsisting relationship with a child who lives with the mother); by the degree of the child's emotional dependence on the parent; by the financial consequences of his deportation; by the availability of emotional and financial support from a remaining parent and other family members; by the practicability of maintaining a relationship with the deported parent; and of course by all the individual characteristics of the child.
>
> 57 … Tribunals considering the parent case under Exception 2 should not err in law if in each case they carefully evaluate the likely effect of the parent's deportation on the particular child and then decide whether that effect is not

> merely harsh but unduly harsh applying *KO (Nigeria)* in accordance with the guidance at paras 50—53 above."

102. I agree with submission made by Mr McVeety that the burden was upon the appellant to provide evidence to demonstrate the consequences of deportation and the impact or possible impact that they would be upon the child concerned. In the evidence before the FtTJ, there was no witness statement from the appellant's former partner making any reference to the circumstances of the child or any impact upon the appellant's relationship with his child in the circumstances where the parties were separated. There was no evidence as to the impact upon the child when the parties were separated as a result of his imprisonment. The FtTJ noted this at paragraph [30].

103. At its highest there was reference in the appellant's witness statement that despite the relationship between himself and his partner breaking down he maintained a stable and subsisting relationship (paragraph 8) and that even when they were living apart geographically he would visit every 2 weeks. At paragraph 10 he describes taking his son out shopping, playing in the park and that since his release from prison he spoke to his son over the telephone. At paragraph 12 reference is made visits whereby his son visited him Slovakia along with his ex-partner. The appellant provided copies of cards and letters.

104. The grounds do not identify any material that the judge overlooked or failed to have regard to when reaching his assessment on the relationship between the appellant and his son and his assessment of the best interests. Furthermore I have not been directed to any evidence before the tribunal which had any bearing on the issue of whether or not the impact upon the appellant's son would be unduly harsh.

105. Therefore I have concluded that even if the FtTJ should have applied S117C (5) it is not an error of any materiality given the lack of evidence that was before the tribunal. The assessment is a fact sensitive one. The FtTJ made findings of facts which are unchallenged in the grounds that demonstrated that there was a very limited degree of family life between the appellant and his son and that his best interests for him to be cared for by his primary carer. The FtTJ found that it was in the best interests of the child for him to live with his primary carer. It follows from that it would also be in his best interests to maintain contact with his father. However the FtTJ did not find that necessarily required the appellant to reside in the UK. The FtTJ found that family life could be maintained and continued by visits as it had been since his departure to Slovakia as set out at paragraph [32] where both the appellant's child and ex-partner visited the appellant in Slovakia staying at the appellant's mother's house and also by the indirect contact via letters and cards which had taken place previously. I have not been referred to any evidence that was before the tribunal judge to show that the appellant's deportation would be unduly harsh on the appellant's child who at the time of the judge's decision was very young and his primary attachment was to his mother.

106. It was not for the judge to speculate about the possible effects of deportation when no evidence existed to indicate the likely effect other than that which would usually be

the case on separation, or any such evidence advanced on behalf of the appellant. There was no evidence to show the effects of deportation upon the family member concerned to demonstrate that it would be such as to merit the description as being "unduly harsh".

107. I therefore conclude that the grounds cannot succeed and that the error, if any made no material difference to the outcome of the appeal. The judge had already undertaken a proportionality assessment under EU law in deciding whether the decision breached the appellant's rights under the EU treaties. The judge made factual findings which were entirely sustainable when considering his personal circumstances and the proportionality of the decision. I have already set out the factual findings made concerning his relationship with his son and the judge's assessment of his best interests based on the limited evidence that had been advanced before the tribunal. Further factual findings related to his ties to Slovakia, where his family members lived and the lack of any ties or integration to the United Kingdom based on his short length of residence, his failure to demonstrate any exercise of treaty rights whilst in the United Kingdom, and as a judge stated "he has no other real connection with the UK apart from his spouse who is separated and the British child for whom he is not the primary carer "(at [36]). At [37] in terms of his integration, the judge found that there was "no evidence before me of any tangible integration of any kind by this appellant into the culture and social society in the UK, and the evidence shows that since coming to the UK in 2017, the majority of this time was spent pursuing his illegal heroin habit and alcohol addiction." The judge concluded that his real ties and connections were significantly with Slovakia and that was evidenced "by the way which he was able to very quickly integrate back into society thereafter his deportation from the UK in all respects." At [38] he contrasted the position in the UK.

108. As stated in the decision of Straszewski, in any given case an evaluative exercise of this kind may admit of more than one answer. If so, provided all the appropriate factors have been taken into account, the decision cannot be impugned unless it is perverse or irrational, in a sense of falling outside the range of permissible decisions. It has not been advanced on behalf of the appellant that the FtTJ's findings of fact were either irrational or perverse and in light of the foregoing, the judge properly considered the appropriate factors and made findings of fact based on the evidence that was before him.

109. The FtTJ therefore addressed the factual issues to reach the conclusions that his deportation was not unlawful under the 2016 regulations and therefore also addressed materially the issues under article 8 having considered the position under the regulations. Any error was not material because the protection for removal provided by the 2016 regulations is arguably greater than any enjoyed by those subject to immigration control under article 8.

110. In my judgement all of those issues relating to proportionality were relevant to any article 8 assessment, and it has not been demonstrated that the judge overlooked any evidence that had been advanced on behalf of the appellant. As to his time in the UK the evidence was very limited. In the short period of his residence, there was no

evidence of any regular employment or any integrative links and therefore the assessment made that removal of the appellant did not constitute a disproportionate interference with his (whether under the EU treaties or article 8) was a decision reasonably open to the FtTJ to make on the evidence that was before him.

Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law which requires the decision to be set aside. The decision of the First-tier Tribunal to dismiss the appeal stands.

Signed *Upper Tribunal Judge Reeds*
Dated : 15 July 2021