Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00003/2021
UI-2021-001171

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12th April 2022	**On 5th July 2022**

Before

THE HONOURABLE MRS JUSTICE COLLINS RICE
(Sitting as a Judge of the Upper Tribunal)
UPPER TRIBUNAL JUDGE CANAVAN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A A
(ANONYMITY DIRECTION MADE)

Respondent

Anonymity
Anonymity was granted at an earlier stage of the proceedings because the case involves a sexual offence against a child. It is appropriate to continue the order. We make clear that the order is not made to protect the respondent's reputation following his conviction for a serious offence. Pursuant to rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008, the respondent is granted anonymity. No-one shall publish or reveal any information, including the name or address of the respondent, likely to lead to members of the public to identify the respondent. Failure to comply with this order could amount to a contempt of court.

Representation:
For the Appellant: Ms. J Isherwood, Senior Home Office Presenting Officer
For the Respondent: Mr. B Bundock, Counsel, instructed by Turpin & Miller LLP

DECISION AND REASONS

Introduction

1. The Secretary of State appeals against a decision of First-tier Tribunal Judge Neville ('the Judge') promulgated on 5th November 2021, allowing AA's appeal against a removal decision.

Background

2. The respondent, AA, is a Polish national. He identifies as a trans woman, but confirms he prefers masculine pronouns at present.

3. He moved to the UK in 2006, as a 25-year-old. He met, and married, his wife here. She is also a Polish national. Their child was born a couple of years later.

4. In 2016, he was arrested after police obtained a warrant, searched his home and discovered a large number of indecent images of children on his devices. These included hundreds of videos and images at the most serious category A. Some of the other indecent images were of his infant child. He had also used search terms referring to father/child incest.

5. AA pleaded guilty to possession of the indecent images, and was convicted after trial on further charges of sexually assaulting his child, and taking indecent images of the child at category B and category C including a video. He was sentenced on to a total of five years' imprisonment and made subject to a Sexual Harm Prevention Order.

6. AA has been anonymised in these proceedings in his child's interests.

Legal framework

7. The legal framework applicable at the time is not materially in dispute.

8. Where the person in question was a citizen of an EU member state, the Citizens Directive (2004/38/EC) provides for the expulsion of a Union citizen on grounds of public policy or public security. Art.27 sets out applicable general principles, including that '*the personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society*'. Art.28 goes on to set out three distinct levels of 'protection against expulsion'. First, there are matters to be taken into account in all cases of deportation on grounds of public policy or public security. Second, EU citizens with a right of permanent residence in the UK can be deported only '*on serious grounds of public policy or public security*'. And third, if the EU citizen has been

resident in the UK for ten years or more, they can be deported only '*if the decision is based on imperative grounds of public security*'.

9. The Immigration (European Economic Area) Regulations 2016 transposed these provisions of the Citizens Directive and made some further and detailed provision in this connection. By Regulation 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 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

(b)…

(5) The public policy and public security requirements of the United Kingdom include restricting rights otherwise conferred by these Regulations in order to protect the fundamental interests of society, and where a relevant decision is taken on grounds of public policy or public security it must also be taken in accordance with the following principles—

(a) the decision must comply with the principle of proportionality;

(b) the decision must be based exclusively on the personal conduct of the person concerned;

(c) the personal conduct of the person must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, taking into account past conduct of the person and that the threat does not need to be imminent;

(d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;

(e) a person's previous criminal convictions do not in themselves justify the decision;

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

(6) Before taking a relevant decision on the grounds of public policy and public security in relation to a person ("P") who is resident in the United Kingdom, the decision maker must take account of considerations such as the age, state of health, family and economic situation of P, P's length of residence in the United Kingdom, P's social and cultural integration into the United Kingdom and the extent of P's links with P's country of origin.

(7) …

(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.).

10. The relevant considerations at Sch.1 include the following:

Considerations of public policy and public security

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

Application of paragraph 1 to the United Kingdom

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

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

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

(a) the commission of a criminal offence;

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

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

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

6. ...

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.

Removal decision

11. On 2nd July 2018, the Home Office wrote to AA giving notice that he could be liable to deportation pursuant to the Immigration (European Economic Area) Regulations 2016, and inviting representations, which his solicitors provided.

12. The Secretary of State made a removal decision on 4th December 2020. She decided that AA had not established a right of permanent residence in the UK, that he constituted a genuine, present and sufficiently serious threat, and that it was proportionate to order his removal to Poland on grounds of public policy and public security. She refused a human rights claim that his deportation would contravene Art.8 ECHR, giving reasons why she considered him not to have demonstrated the 'very compelling circumstances' required by s.117C of the Nationality, Immigration and Asylum Act 2002.

13. After filing a notice of appeal against that decision, further information was provided by AA's solicitors to the Home Office. By a supplementary decision letter of 6th April 2021, the Secretary of State accepted AA had resided in the UK for a period of at least ten years and had acquired a right of permanent residence in 2014. But she concluded that he was not entitled to 'imperative grounds' protection (Regulation 27(4)), being insufficiently integrated in the UK to satisfy the requirement of ten years' 'continuous' residence. She accepted he could be removed only on serious grounds of public policy and public security, but considered that test was met. She therefore confirmed her removal decision.

First-tier Tribunal appeal decision

14. AA's appeal came before the Judge at a hearing on 28th April 2021. Since by that time the Secretary of State had accepted that AA had acquired a right of residence in the UK, but disputed his entitlement to rely on ten years' 'continuous' residence, the first question the Judge asked himself was about which level of protection applied, and whether this was a Reg 27(3) or a Reg 27(4) case. On this question, the Judge directed himself that the caselaw was to the effect that "*time when he is not integrated in the UK does not count towards the ten years, and the appellant's integration into the UK must not have been broken at the time of the removal decision*". He accepted AA's evidence of having forged strong social links prior to his offending, and of taking steps to preserve them throughout his criminal proceedings and imprisonment "*such that, at the date of the removal decision, his integration was weakened but not so broken as to mean that he ceased to be entitled to the highest level of protection. He may only be removed from the UK on imperative grounds of public security*." He found,

in other words, and contrary to the Secretary of State's position, that this was a Reg.27(4) case and the higher level of protection applied.

15. The second question the Judge identified for himself was whether, applying the standard of 'sufficiency' demanded by that higher level of protection, AA's conduct represented '*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*' (Reg 27(5)(c)). The Judge considered that the type of offending committed by AA did engage grounds of public security, and that there was evidence that he did pose a genuine and present risk to public security. But he concluded that that risk could not be said to be particularly serious, so as to mean that AA's removal was justified on *imperative* grounds of public security. In reaching that conclusion, the Judge gave particular weight to a prison OASys report of 27th January 2020 indicating a very low general risk of reoffending. That in turn had had particular regard to the protective measures contained in the SHPO and AA's likely compliance with them.

16. The third question the Judge had identified for himself was whether, if it was otherwise open to the Secretary of State to deport AA, that decision would '*comply with the principle of proportionality*' (Reg.27(5)(a)). He concluded that the appeal would have to be allowed on the basis of his answers to the first two questions, and that it was strictly speaking unnecessary to consider proportionality. But he observed in any event that removal would have been disproportionate, since it would have a major adverse effect on AA's rehabilitation and increase the likelihood he would commit further offences in future, since the benefit of the SHPO would be lost.

Secretary of State's grounds of appeal

17. Three grounds of challenge are advanced:

    i) the Judge misdirected himself in law in assessing AA's integration in the UK, and in concluding that he was entitled to the highest level of protection from removal;

    ii) the Judge failed to give adequate reasons for finding there were no imperative grounds of public security for deporting AA;

    iii) the Judge failed to give adequate reasons for the findings he made on proportionality.

Consideration and analysis

18. The Secretary of State's concerns about this case are unsurprising. AA had received a substantial prison sentence for serious and abhorrent criminal behaviour, including against his own infant child, grossly violating the child's trust and personal integrity. But the FTT Judge had ruled he could not be deported, nevertheless. That might strike the public as counter-intuitive. We are asked accordingly to consider whether that decision was wrong (vitiated by legal error), inexplicable (or at least inadequately explained), or otherwise one which it was not properly open to the Judge to take.

19. There is no real dispute that the questions the Judge asked himself were at least the right questions. We agree, and we consider them in the same order he did. The first engages the issue of the correct level of protection from deportation to which AA was entitled, as an EU citizen, and turns on whether the ten-year 'continuous' residence requirement was or was not satisfied. The first question for us is therefore whether the Judge went about answering that question the wrong way and/or reached the wrong answer. That, broadly speaking, is the challenge posed by the Secretary of State's first ground of appeal.

20. The second question for the Judge was whether AA's conduct represented '*a genuine, present and sufficiently serious threat*'. The challenge posed by the Secretary of State's second ground of appeal is whether, *even if* the higher level of protection applied, the Judge's decision that it was not satisfied in this case was flawed. That is the second question for us.

21. Whether the question of proportionality properly arose, and if so, whether the Judge's approach to it was sustainable, is the challenge posed by the Secretary of State's third ground of appeal.

(a) Level of protection

22. The Judge set out and directed himself to the relevant principles to be derived from the authorities, on the key question of whether AA's offending and imprisonment have broken integrative links previously forged in the UK, such that continuity of residence, and the highest level of protection, are lost. He had to bear in mind that, according to law, the offending itself did not *automatically* cancel the protection: all the relevant facts had to be properly considered.

23. In particular, from the Court of Appeal decision in *SSHD v Viscu* [2019] EWCA Civ 1052 at paragraph 44, the Judge noted that (i) the degree of protection is dependent on the degree of integration in the state of residence; (ii) '*in general, a custodial sentence is indicative of a rejection of societal values and thus of a severing of integrative links*' but (iii) the extent of any such severing depends on an overall assessment of the individual's situation at the time of the deportation decision. He noted also from *B and Vomero* [2019] QB 126 several considerations specified as relevant to that 'overall assessment', including the strength of the previous integrative links, the nature of the offence, the behaviour and attitude of the individual while

in prison, and the value of his social rehabilitation in a country in which he had been genuinely integrated.

24. He also directed himself to the mandatory considerations set out in Reg.27(6) and to the guidance of the Court of Appeal in *CI (Nigeria) v SSHD* [2019] EWCA Civ 2027 on weighing cultural and social integration and the relevance of criminal offending and imprisonment. (Although the Secretary of State's grounds of appeal in this case sought to take issue with the relevance of that authority, that objection was on further consideration – and in our view correctly – withdrawn before us.)

25. We cannot fault the Judge's setting out of the relevant principles in statute and binding caselaw. No error of law is disclosed here. The question for us is therefore whether the Judge failed to apply them properly to the facts before him. In turning to that, we hold in mind that the authorities require an 'overall assessment' which, while directed as to proper relevant considerations, is essentially evaluative and fact-specific.

26. We are struck by how anxiously and carefully the Judge addressed himself to this exercise. He started by recognising and accepting a number of weighty factors in favour of upholding the Secretary of State's decision on this point. AA did not have continuing family ties in the UK (his wife and child had since moved back to Poland). He had himself spent his formative years in Poland and been here for less than 15 years. And he had committed serious criminal offences which undermined his integration. The nature of his crimes actively repudiated the social and cultural norms that underpin integration; that, and the length of his sentence, inevitably distanced him from UK society.

27. On the other side of the balance, the Judge weighed evidence of what had been, apart from the offending, a 'blameless and productive' life in the UK. AA spoke English, had obtained a Master's degree, and was financially independent through work. '*He had explored his gender, a fundamental part of a person's identity, within the UK and by reference to its social customs and mores, and with the support of UK-based healthcare professionals.*' His relationship with his wife was continuing, and there was a prospect of her return to the UK on his release from prison. The OASys report showed that while in prison he had demonstrated 'pro-social activities and attitudes' including work and study; he had 'enhanced' prisoner status. There was evidence testifying to supportive friendships in the UK, and the cutting-off of ties by his wider Polish family and friends in Poland. The Judge noted that in sentencing remarks his trial judge had described his wider life as 'productive and faultless'.

28. Making his 'overall assessment' on the basis of all of these factors, the Judge noted that this was not a case where they all pointed in one direction. He found on the evidence before him that AA had forged strong UK links prior to his offending, and taken steps to preserve them throughout his arrest and imprisonment. Although the Secretary of State challenges that conclusion in its own right, the finding that AA was - *otherwise than with*

regard to his offending - strongly integrated appears to us to be one well within the range of conclusions open to the Judge on the evidence before him and for the reasons he gave.

29. The nub of the challenge the Secretary of State makes appears to us therefore to be in relation to the Judge's handling of the offending itself in making the 'overall assessment'. In a passage strongly criticised by the Secretary of State, the Judge said this:

> "*The offending going on in the background had little active effect on the remainder of his public social and cultural life, even though it is by its nature antisocial. While I do not diminish the harm this type of offending causes, in this appeal it has had a less destructive effect on integration than, for example, would be the case with physically violent conduct in public, gang membership, and so on. It is insidious and conducted behind closed doors, but this also means that normal life continued around it. While at first blush that analysis may seem unpalatable, in my view it is necessary to give effect to the purpose of the present exercise: assessing integration. The proportionate response to the nature and seriousness of the particular offending is a different matter, which comes later.*"

30. The Secretary of State's challenge suggests that this radically underplays the profoundly counter-social nature of this offending. AA's convictions were for offences which were repudiatory of our cultural and social norms and values, not just in spite of, but *because* of, their secret, exploitative and harmful nature. His conduct was a gross violation of the family, and of the protection that family privacy ought to provide to a very young child, both of which are basic building blocks of UK society. The Secretary of State says in effect that the Judge's failure to give proper weight to this fundamentally important factor led him into public law error and therefore to the mischaracterisation of the protection from deportation to which AA was properly entitled.

31. We understand the Secretary of State's concerns, and have reflected carefully on this. Our conclusions are as follows.

32. First, this passage of the judgment, set out above, must not be taken out of context. The Judge was engaged on an 'overall assessment' of all the relevant facts, having addressed himself correctly to the principles for doing so, and his determination, must also be fairly considered in the round, with this passage included in its proper place.

33. Second, a fair reading of this passage suggests to us that the Judge was making a more limited point about the nature of AA's offending than the Secretary of State fears. He had already clearly accepted that it was abhorrent, viewed with public revulsion, and was actively repudiatory of the social and cultural norms underpinning integration. He was however making, in our view, the limited point that while some forms of offending are *almost inevitably* inconsistent or incompatible with the development of *other* strong integrative links, some are not, and AA's fell into the second

category. That is a narrow point, but not irrelevant to the 'overall assessment'. It indicates not an inherent failure to acknowledge and give appropriate weight to the repudiatory nature of the offending, but a simple acknowledgement that proper weight had to be given at the same time to such positive and countervailing evidence as there was of genuine integration.

34. That is in accordance with the law. Not every case of sexual offending against a child will inevitably result in deportation, even against a young child within a family. The authorities are clear beyond any doubt that a case-by-case scrutiny of *all* the relevant factors *must* be taken into account, so that a full balancing exercise can be undertaken. In our view, that is what the Judge was saying here.

35. Third, we note the Judge's own acknowledgment of the consequent and inevitable fact that that means that sometimes the overall balance will come down against deportation, even in cases of serious and abhorrent offending marked by substantial prison sentences. That is absolutely inherent in the applicable and fact-sensitive nature of the legal test. Whether this was such a case or not was a matter to be addressed by making an 'overall assessment' of all the relevant factors. The Judge acknowledged the difficulty of that task in a case like this, and the degree of careful objectivity required in making the balance of competing public interests the law requires. It appears that he found this case finely balanced on the facts: he concluded that AA's integration was, overall, 'weakened but not so broken as to mean that he ceased to be entitled to the highest level of protection'.

36. We can see no error of law or defect of approach in this. It was, to re-emphasise, a decision which called for a principled approach, careful fact-sensitivity, and an overall evaluation. The Judge demonstrated these. We cannot find that he considered and weighed the offending in this case in a way to which he was not properly entitled. He looked carefully and in detail at all the particular facts of the offending, the evidence given at the criminal trial and the sentencing remarks. He had the benefit of hearing and testing oral evidence in the proceedings before him. Another judge might have weighed the relevant factors differently, come to a different conclusion, or explained the decision otherwise; but that is not the test on this appeal. It is not argued that this was an irrational decision – one which no judge, properly directed, could take on the evidence – and we cannot go that far on any basis. We cannot allow this appeal unless we are satisfied that the Judge's decision was defective in law or 'wrong' – one to which neither he nor any other Judge was properly entitled. We are not so satisfied.

37. Our final conclusion therefore is that the Judge's decision that AA was entitled to the highest of the three levels of protection from deportation, because he had a right of residence in the UK and more than ten years' continuous and unbroken (on balance, sufficiently integrated) residence here was within the range to which the Judge was entitled, on the analysis he made and for the reasons he gave. We reject the Secretary of State's first ground of appeal accordingly.

(b) 'Genuine, present and sufficiently serious threat'

38. The test to which the Judge directed himself in considering the second question before him was, therefore, in our view, the correct one:

> "*Whether the appellant's personal conduct poses a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society must therefore be considered on the basis that his removal may only be justified on imperative grounds of public security. It may not be justified on grounds of public policy, as confirmed in Hafeez v SSHD [2020] EWCA Civ 406 at [47], and the application of the fundamental interests of society listed at Schedule 1 is modified accordingly.*"

39. The Judge directed himself to the correct and relevant authorities on applying the 'imperative grounds' test to the issue of 'public security'. He was in no doubt that AA's offending against children – both his own child and by the possession and sharing of indecent images of other exploited children – engaged considerations of public security. The question he addressed himself to was therefore whether the gravity of the offending and, especially, the likelihood of reoffending, were such as to justify removal on *imperative* grounds – that is to say, as guided by the authorities, on the basis of exceptional circumstances and because the threat to public security was of a particularly high degree of seriousness. What was required was a 'real world' assessment of the threat AA posed to public security, bearing in mind he was shortly to be released from prison into the community.

40. The Judge found that AA posed a *genuine* and *present* risk to public security but it was not a sufficiently *serious* or high risk to warrant AA's deportation. In reaching that conclusion, he had regard to the measurement of his inherent risk of reoffending, as set out in the OASys report, and the measures to be put in place on release to facilitate his rehabilitation and manage the continuing risk he did pose. These included notification requirements and the 10-year SHPO which, among other things, prevented him being in contact with his child until they are 16.

41. The Secretary of State challenges this conclusion on the ground of insufficiency of reasoning. We are unable to sustain that challenge. It is clear on the face of the judgment that the Judge considered the OASys report carefully and in considerable detail, setting out what he considered to be the salient factors over several pages of summary. In his analysis he went on to note that the report applied several different models, including both static and dynamic factors, all producing a very low risk of reoffending overall. He noted that the most concerning aspect of the report was a reference to a 'medium risk of serious harm to children' if unsupervised. But he found on the evidence before him nothing to suggest anything other than confidence that AA would comply with the SHPO provisions, would have neither the wish nor the practical ability to do otherwise, and was highly motivated to avoid the risk of another term of imprisonment.

42. The Judge noted the guidance in *Hafeez* to avoid the trap of focusing on the seriousness of the past offending rather than seriousness of the risk of re-offending. He was careful to avoid falling into it. He explained with care and clarity why, on the evidence before him, he had concluded that risk of reoffending was too low to satisfy the 'imperative grounds' test. That was a matter of 'real world' factual evaluation, supported and explained by reference to the OASys report.

43. The Secretary of State raised a further point in her grounds of appeal. This relates to the decision of the CJEU in *R v Bouchereau* [1978] QB 732 that, while the relevant test focuses on a *present* threat, '*in an extreme case, that threat might be evidenced by past conduct which has caused deep public revulsion*'. Although the criticism is made that the Judge had made an error of law in not citing and following that decision, we cannot find that this was an argument raised before the Judge at the time; it appears to be being raised for the first time before us.

44. In any event, we are not persuaded that this is a point of any materiality. The Judge was properly engaged on considering whether the risk of reoffending was sufficiently serious. It is not apparent to us that he was bound to regard this case – or would have been justified on the evidence in regarding it – as 'extreme'. All offending, including but by no means limited to sexual offending, which results in imprisonment for a total of five years must properly invite public revulsion, but 'extreme' is a self-evidently extraordinary standard. The evidencing of future threat must plainly be done so far as possible not on generalised extrapolation from any category of convictions, but from the best available facts and professional assessments relating to the particular offender. That is what the Judge did here.

45. The Secretary of State disagrees with the Judge's assessment of the threat of future offending. But that is not the test for us on appeal. We are satisfied that the Judge's decision that AA's conduct, while it posed a genuine and present threat affecting fundamental interests of society, did not pose a sufficiently serious threat, because the evidence did not establish that he posed a sufficiently high risk of serious offending in future – and that therefore there were no sustainable 'imperative grounds of public security' justifying his deportation – was one which was properly approached, to which he was properly entitled, and which he sufficiently explained. We reject the Secretary of State's second ground of appeal accordingly.

Conclusions

46. Whether or not we agree with the Judge's decisions in this case is irrelevant to this appeal. The proper questions for us are whether the Judge went wrong in law in any way. We cannot find that he did. He made what he understood was a difficult and perhaps finely balanced decision, but he did so in accordance with the law, and with some care.

47. The Judge's answers to the first two questions before him disposed of the case before him. The third question, of proportionality, did not arise, since the Secretary of State's removal decision could not therefore stand in any event.

48. Our analysis reaches the same point. Since we do not uphold the Secretary of State's challenges on the first two questions, her third ground of appeal becomes academic.

49. This appeal is dismissed.

DECISION

The First-tier Tribunal decision did not involve the making of an error on a point of law

Signed: Mrs Justice Collins Rice
Mrs Justice Collins Rice

Date: **16 May 2022**

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email