Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: DA/00133/2021**

THE IMMIGRATION ACTS

Heard at Field House, London	**Decision & Reasons Promulgated**
On Wednesday 2 February 2022	**On Wednesday 09 March 2022**

Before

UPPER TRIBUNAL JUDGE SMITH
DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

-and-

SALMAN OSMAN

Respondent

Representation:
For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer
For the Respondent: Ms A Radford, Counsel instructed by Turpin & Miller LLP

DECISION AND REASONS

BACKGROUND

1. This is an appeal by the Secretary of State. For ease of reference, we refer to the parties as they were in the First-tier Tribunal. The Respondent appeals against the decision of First-tier Tribunal Judge Bulpitt promulgated on 5 August 2021 ("the Decision"). By the Decision, the Judge allowed the Appellant's appeal against the Respondent's decision dated 12 March 2021 making a deportation order against him in accordance with the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations").

2. The Appellant is a Dutch national born 13 July 2001. It is common ground that he moved to the UK with his family in October 2002 and has been resident here since. It is therefore common ground that he is permanently resident in the UK under EU law. It is also common ground that the Appellant was sentenced to 54 months in a Young Offenders Institute ("YOI") on 8 August 2019 for an offence of robbery. He was sentenced at the same time for two offences of possession of a knife for which he received sentences of 6 months each to run concurrently. The Appellant had previously been sentenced to referral orders in March 2018 for offences of common assault and fraud.

3. The Respondent did not accept that the Appellant is entitled to rely on the higher threshold of imperative grounds. It is common ground that the period of ten years in order to qualify dates back from the date of decision and cannot include periods of imprisonment. However, following cases such as Hussein v Secretary of State for the Home Department [2020] EWCA Civ 156 ("Hussein"), it is also accepted that an EU national can benefit from the higher threshold if the period of imprisonment has not broken integrative ties formed previously.

4. The Judge concluded that the Appellant was entitled to benefit from the higher threshold and could not be deported except on imperative grounds ([24] of the Decision). He went on to consider whether such grounds exist but concluded that they did not ([28] of the Decision). Indeed, the Judge also concluded that there would not be serious grounds for deportation. He therefore allowed the appeal.

5. The Respondent appeals on two grounds as follows:

   Ground one: Material misdirection of law. The Respondent relies on the judgment of the CJEU in B v Land Baden-Wüurttemberg and Vomero v Secretary of State for the Home Department (C/424/2016) ("Vomero") and asserts that the question is not as the Judge understood whether the Appellant had acquired ten years' residence at the date of hearing but whether that point is reached at the date of decision (excluding as we have already noted periods of imprisonment).

   Ground two: Failing to give adequate reasons for findings on a material matter. It is asserted that the Judge has failed to provide adequate reasons for finding that the Appellant's integrative links had not been broken having regard to the factors set out in Vomero. The Respondent also questions the Judge's finding that the Appellant did not pose a genuine, present and sufficiently serious threat to the fundamental interests of society and says that the Judge has failed to consider the seriousness of the consequences of reoffending. The Respondent "asserts that the [Judge] has materially misapplied the Regulations and undermined the true nature of the public policy/interest issues at play in this appeal". She says that the Appellant's past conduct in and of itself might be enough to justify deportation given the seriousness of the offence.

6. Permission to appeal was granted by First-tier Tribunal Judge Parkes on 31 August 2021 in the following terms so far as relevant:

> "... 3. The sentence of 4 ½ years for a robbery is a significant sentence for a first offence and clearly indicates it was serious and it was followed by other offences and prison adjudications for assaults. As the Judge found in paragraph 18 the Appellant had lived in the UK from the age of 1 and so the higher level of protection applied whatever end date was taken. The observation in paragraph 19 that his sentence to YOI demonstrates his integration makes no sense, the fact of incarceration undermines integration. Having regard to the observations in paragraph 20, and there are others, the Judge arguably may have approached the assessment from the wrong angle and underestimated the danger he presents. In the circumstances the grounds are arguable.
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> 4. The grounds disclose arguable errors of law and permission to appeal is granted."

7. On 22 January 2022, the Appellant filed a Rule 24 reply seeking to uphold the Decision.

8. The appeal came before us to consider whether there is an error of law in the Decision and if we so conclude either to re-make the decision or remit the appeal to the First-tier Tribunal in order for it to do so. We had before us a core bundle of documents including the Respondent's bundle (referred to as [RB/xx]) and the Appellant's bundle before the First-tier Tribunal (referred to as [AB/xx]).

9. Having heard oral submissions on behalf of both parties, we reserved our decision and indicated that we would provide that in writing which we now turn to do.

DISCUSSION AND CONCLUSIONS

10. Although Mr Tufan's submissions focussed mainly on the Respondent's second ground, he did not abandon the first ground. We take the grounds in turn.

Ground one

11. There is no merit in this ground. At [9] of the Decision, the Judge said the following about the issue in dispute regarding the level of protection:

> "In the respondent's decision letter it is asserted that, although the appellant has lived in the United Kingdom for more than 10 years counting back from this date of hearing this appeal, he does not qualify for the greater level of protection provided by regulation 27(4) of the Regulations because his offending and his response to his offending has demonstrated a lack of integration into society in the United Kingdom (see [18] – [23] decision letter). The respondent argues therefore that the relevant question is whether deportation is justified on serious grounds of public policy and public security? The appellant does not accept that the appellant has shown a lack of integration in the United Kingdom and argues that he is entitled to

> the higher level of protection provided by regulation 27(4) and that deportation will only be justified if there are imperative grounds of public security. I must resolve therefore this issue about the level of protection to which the appellant is entitled under the Regulations."

12. When turning to determine this issue, the Judge directed himself as follows:

> "17. Since all agree that the appellant has been living in the United Kingdom for more than ten years, the answer to this disputed issue depends on whether, following an overall assessment of the appellant's situation including his offending and time serving his sentence in a Young Offenders Institute, the integrative links between the appellant and the United Kingdom have been broken."

The Judge thereafter referred to Hussein and Vomero and summarised his understanding of what is said in those cases as follows:

> "… In those joined cases the CJEU identified a number of factors relevant to the question of whether integrative links between an appellant and his host country have been broken including: the integrative links (including from a social, cultural and family perspective; the extent to which the person is genuinely rooted in the society of the state) which existed prior to detention, the nature of the offence which resulted in imprisonment including the circumstances in which the offence was committed; and the behaviour of the person during the period of imprisonment (see [73] and [74] of the CJEU decision)"

13. The Judge had also set out at [4] of the Decision regulation 27 of the EEA Regulations which refers to the ten years' period being counted back from the date of decision. He therefore clearly understood that the fact of ten years residence prior to imprisonment would not in itself be sufficient to entitle the Appellant to benefit from the higher threshold. In this case, the Appellant had exceeded a period of ten years prior to his incarceration and in fact before he committed his first offence.

14. The reference made by the Judge to date of appeal hearing at [9] of the Decision is difficult to fathom. It is a reference to the Respondent's decision letter and therefore could not possibly refer to date of hearing of the appeal. We can only assume it was a slip. Importantly though there is no reference to this being the relevant date at [17] of the Decision. That is the point at which the Judge sets out his understanding of the law and the legal issue he has to determine. Accordingly, whatever he said previously about the respective positions of the parties is not relevant.

15. Moreover, it is difficult to see what material difference there could be if the Judge had counted back from date of appeal hearing rather than date of hearing. As we understood the position, the Appellant remained incarcerated at the date of hearing before the First-tier Tribunal. None of the period of imprisonment could count towards the ten years' period.

16. For those reasons, there is no error of law disclosed by the Respondent's ground one. At best it identifies a slip which is immaterial. There is no material misdirection as to the law.

Ground two

17. We turn then to the second ground which asserts that the Judge has failed to provide adequate reasons for his findings on material issues. At one stage during his submissions Mr Tufan suggested that the Judge's conclusions on these issues were perverse. That is not pleaded and should have been if that were the Respondent's case. Nonetheless, we have considered that submission.

18. We begin with the Judge's finding regarding the Appellant's integration and the breaking of integrative links since that is important to the Judge's consideration of the level which applied and thereafter to the consideration of the threat posed by the Appellant.

19. We start by referring back to the Judge's self-direction on this issue and the reference to Vomero since the Respondent asserts that the Judge failed to have regard to the factors therein set out. In her grounds the Respondent submits that Vomero "requires an assessment of the nature of the offence; the period of detention; the circumstances in which the offence was committed and the conduct of the person while in detention". That is an almost identical wording to that used by the Judge at [17] of the Decision (cited at [12] above) when setting out the factors requiring consideration when looking at whether integrative links have been broken. The issue which then arises is whether the Judge has considered those factors and given adequate reasons for determining them in the Appellant's favour.

20. The section dealing with integration and breaking of integrative ties is lengthy and we do not propose to set it out in full. We have cited below [19] of that section given the criticism of that paragraph in the grant of permission.

21. We begin however with [18] of the Decision where the Judge deals with the Appellant's integration prior to his convictions as follows:

> "There can be no sensible doubt that the appellant was genuinely rooted in British society prior to his detention. The unchallenged evidence is that from the age of one until he was imprisoned the appellant lived in the United Kingdom with his mother, father and two sisters with extended family members living nearby. The evidence clearly establishes that the appellant was educated in the United Kingdom, attending Aylward Primary School, Orion Primary School and Kingsbury High School all in the same area of London. School reports talk about the appellant's good attitude to learning and his close friendships with classmates. It is apparent that the appellant achieved some success at school obtaining GCSEs in Maths, English Literature and English Language, Sociology, History, Science and Additional Science."

It is not suggested that the Judge was not entitled to reach the finding about the fact and level of integration reached prior to the Appellant's first conviction. Indeed, on our reading of the Respondent's decision letter, she did not suggest that the Appellant was not integrated prior to his criminal offending. That conclusion about prior integration then formed the context in which the impact of imprisonment had to be judged.

22. At [19] of the Decision, the Judge began his analysis of whether the Appellant's integrative ties had been broken. That included consideration of the Appellant's behaviour whilst in the YOI. It is not disputed (nor could it be following Vomero) that this is relevant. The Judge said the following about the Appellant's rehabilitation whilst in the YOI:

> "There can similarly be little doubt that the appellant's behaviour having been sentenced to detention in a YOI has demonstrated his social and cultural integration. Deborah Solomons a Service Manager for the charity 'Belong' describes the appellant's attendance on the 'Plan A Programme' and says that he '*used and developed teamwork, communications and assertiveness skills*' describing him as 'an *intelligent, mature, respectful, thoughtful, hard-working polite young man*'. The Plan A progress report adds that the appellant's '*consistent presence and voice meant he became something of an anchor in the group, he was able to support group members in keeping the group process alive and in mind*'. The most recent OASys report adduced in the appellant's bundle explains that the appellant has completed restorative justice work while in custody and completed the 'Railway Course' with a view to employment when released."

23. We accept, as said in the grant of permission, that it might go a little far to describe the relevance of the Appellant's behaviour in the YOI as adding to social and cultural integration if that is what the Judge meant. We only say "might" because at [74] of its judgment in Vomero, the CJEU said this about the way in which the test has to be applied:

> "74. While the nature of the offence and the circumstances in which it was committed shed light on the extent to which the person concerned has, as the case may be, become disconnected from the society of the host Member State **the attitude of the person concerned during his detention may, in turn, reinforce that disconnection or, conversely, help to maintain or restore links previously forged** with the host Member State with a view to his future social reintegration in that State."
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> [our emphasis]

That passage might suggest that positive behaviour during detention can reinforce integrative links or, as there said, "restore links" if those have been broken by reason of the criminal offending.

24. In any event, given his earlier self-direction, we do not consider that the Judge erred by taking into account that the Appellant's positive behaviour in the YOI was capable of demonstrating the continuation of integrative links previously developed.

25. It cannot be suggested as the Respondent appears to do in her grounds that the Judge failed to take into account also the factors weighing against the Appellant in this regard. The Judge deals with the two adjudications for assault whilst in the YOI at [20] of the Decision. As the Judge there points out "[t]hese adjudications must however be considered in the context of his whole prison history". The Judge thereafter refers to the more recent OASys report which provides evidence that the Appellant has matured.

26. The Judge ends that paragraph with the finding that "the evidence as a whole indicates that the appellant's behaviour since being sentenced to imprisonment demonstrates good social and cultural integration". Again, we accept that this sentence might suggest a finding that the period of imprisonment enhanced the Appellant's integrative links formed to that point and that this might not be the correct approach. However, if the Judge found (as he did) that the Appellant's behaviour was positive in terms of integration, this must necessarily encompass a finding that his behaviour was not sufficient to break integrative links formed previously.

27. Thereafter, the Judge tackles head on the circumstances of the Appellant's offending and the impact of that on his integration. The nature of the index offence is set out at [21] of the Decision. The Judge there describes it as "a serious and grossly anti-social offence". He accepts the Respondent's case that the Appellant at trial and up to the point of sentence showed a lack of remorse. The Judge concludes that paragraph with the finding that "[a]ll of these factors do suggest a lack of integration in and rejection of United Kingdom society".

28. The Judge was however entitled to take into account also the factors which mitigated against the weight to be given to the lack of integration in that period. He did this at [22] and [23] of the Decision. Mr Tufan took issue with the citations from the OASys report and Judge's sentencing remarks. The latest OASys report dated 26 May 2021 is at [AB/15-58], the earlier report at [RB/112-160] and the sentencing remarks at [RB/8-17]. We have read those documents carefully to judge whether Mr Tufan's criticisms of the evidence relied upon by Judge Bulpitt are made out.

29. The Judge was entitled to regard the Appellant's age as relevant. Although the sentencing Judge did find all those sentenced for the robbery to be equally culpable, the Appellant was in fact the youngest of the group. The sentencing Judge did describe the attack as demonstrating immaturity. Judge Bulpitt also accepted that the sentencing Judge referred to the attack as involving a level of sophistication. Both the earlier OASys report (in the Respondent's bundle and dated November 2019) and the later one (in the Appellant's bundle from May 2021) refer to the Appellant having been influenced by the older members of the group which carried out the robbery (including the Appellant's uncle). We will turn to the detail of the OASys reports in relation to danger posed by the Appellant below.

30. The Judge also took into account the Appellant's further offending (at [23] of the Decision). In this regard, there appeared to be some

misunderstanding during submissions to us regarding the Appellant's behaviour after the index offence which led to his imprisonment. That may arise because of the way in which the offences are set out at [8] of the Decision. As was agreed between the parties before us, the offence of robbery and offences of possession of a knife occurred on one date (18 September 2017). There were three offences which post-dated that offence but for which the Appellant was convicted prior to his conviction for the index offence. However, as the Judge points out at [23] of the Decision and as is confirmed by the first OASys report, following the convictions for the offences which post-dated the index offence, the Appellant did not commit further offences. The Judge was entitled therefore to take into account that "the appellant's offending took place in a brief period of time when the appellant was considerably younger and less mature than he is now".

31. Since the Respondent's pleaded challenge to the Decision under the second ground is an inadequacy of reasons, we set out the Judge's conclusion regarding the integration issue at [24] of the Decision as follows:

> "The offence the appellant committed was serious and anti-social having a significant impact on his local community, this is reflected by the significant sentence which he received and has served as a result. However, given his immaturity at the time he committed it and the suggestion that he was naïve and led by other older offenders; given the strength of his societal ties arising from his extensive time living in the United Kingdom, his education in this country and his familial links to the country; and given his positive response having been convicted and sentenced for his criminality I find that the appellant's offending has not broken the integrative links between him and United Kingdom society. As such I find that the appellant is entitled to the higher protection arising from regulation 23(4) of the Regulations and that he can only be removed from the United Kingdom if there are '*imperative grounds of public safety*'"

32. In the section of the Decision to which we have referred in the foregoing, the Judge sets out the correct test. He has given sufficient reasons for his conclusion. We have found that the Judge was entitled to reach the conclusions he did on the factors he considered. Those factors are the ones identified by the CJEU in Vomero (as well as being the ones which the Respondent says are the relevant ones in her grounds). We do not doubt that another Judge could have reached the opposite conclusions on the same evidence. That is not however the test for perversity. It cannot sensibly be argued that no reasonable Judge properly directed could have reached the conclusion reached by this Judge in relation to the Appellant's integration.

33. For those reasons, we are not persuaded that the Respondent has identified any error in the conclusion of the Judge regarding the imperative grounds threshold which applies.

34. Having concluded that this is the threshold which Judge Bulpitt was entitled to find applied, the Respondent has a high hurdle to cross when seeking to demonstrate that the Appellant poses a continuing danger.

Although, as we will come to, Mr Tufan sought to persuade us that the Judge could and should still have reached a conclusion that the Appellant represents a genuine, present and sufficiently serious threat to the fundamental interests of society, and therefore we need to consider in any event whether the Judge's conclusion in relation to threat was justified, we have in mind that the sorts of offence to which the imperative grounds threshold is likely to apply are at the high end of a seriousness scale.

35. Although neither party took us to any domestic case (or indeed any CJEU case) which deals with the sort of offence to which imperative grounds might apply, we have taken into account what is said by the Court of Appeal in Straszewski v Secretary of State for the Home Department [2015] EWCA Civ 1245 ("Straszewski") (to which Ms Radford referred us more generally) as follows:

> "22. Our attention was not drawn to any case in which the CJEU has considered the kind of conduct that is likely to be sufficiently serious to justify deportation of an EEA national who enjoys a permanent right of residence but has not lived in the member state concerned for a period of at least ten years. Ms Chan did, however, draw our attention to the decision in *I v Oberbürgermeisterin der Stadt Remscheid*, in which the claimant had been convicted of multiple offences of sexual abuse, sexual coercion and rape of a 14 year old girl in respect of which he had been sentenced to 7½ years' imprisonment. The CJEU was asked to decide whether the expression 'imperative grounds of public security' referred only to conduct which threatened the security of the state itself, its population and the survival of its institutions or was broader in scope.
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> 23. In giving its judgment the court emphasised that member states retain the freedom to determine the requirements of public policy and public security in accordance with their national needs, but that the requirements of the Directive must still be interpreted strictly. Criminal offences which constitute a particularly serious threat to one of the fundamental interests of society or which pose a direct threat to the calm and physical security of the population may fall within the concept of 'imperative grounds of public security', as long as the manner in which such offences were committed discloses particularly serious characteristics. However, the court also emphasised that even then deportation will not be justified unless the conduct of the person concerned represents a genuine, present threat affecting one of the fundamental interests of society, which normally implies that he has a propensity to act in the same way in the future (see paragraphs 17-30).
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> 24. I do not find that case to be of great assistance in determining whether in any individual case there are 'serious' grounds of public policy or public security sufficient to justify deportation. It is clear, as the court confirmed, that the expression 'imperative grounds of public security' creates a considerably stricter test than merely 'serious' grounds, but since the application of the test is primarily for the member state concerned, which must take into account social conditions as well as the various factors to which the Directive itself refers, the question is likely to turn to a large extent on the particular facts of the case. It would therefore be unwise, in my view, to attempt to lay down guidelines. In the end,

> the Secretary of State must give effect to the Regulations, which themselves must be interpreted against the background of the right of free movement and the need to ensure that derogations from it are construed strictly. In that context it is worth noting that even in a case where it is considered that removal is prima facie justified on imperative grounds of public security, the decision-maker must consider, among other things, whether the offender has a propensity to re-offend in a similar way (judgment, paragraph 30)."

36. Whilst that passage indicates that the offences to which imperative grounds apply are not necessarily confined to those involving security to the State, nonetheless a much higher threshold of seriousness is required. Whilst we do not downplay the seriousness of the Appellant's offending, particularly the very extreme impact which it had on his victims, it is difficult to see what are said to be the "particularly serious characteristics" of the index offence. Indeed, the Respondent's decision letter does not suggest that the imperative grounds threshold could be made out; she takes issue only with whether the Appellant can benefit from that threshold.

37. In any event, we do not consider it necessary to determine this issue (if issue there is) for two reasons. First, as the Court of Appeal makes clear in Straszewski, the Tribunal still has to consider the offender's propensity to reoffend whichever threshold applies. Second, in this case, the Judge found that the Appellant did not pose a genuine, present and sufficiently serious threat whether imperative grounds or serious grounds apply ([28] of the Decision).

38. We therefore turn to consider the Judge's reasoning which led to that conclusion and the Respondent's criticism that the Judge has given inadequate reasons or, as Mr Tufan would have it, has reached a conclusion which was not open to him on the evidence.

39. The Judge began by taking account of his earlier comments about the nature of the offence committed by the Appellant and its seriousness. As the Judge observed at [25] of the Decision, "the circumstances [of the offence] would suggest that the appellant poses a risk to the interest of society in maintaining public order, preventing social harm and protecting the public". There is no basis for the assertion in the grounds that the Judge has "undermined the true nature of the public policy/interest issues at play". Nor is there any legitimate criticism to be made in this regard about any failure by the Judge to consider Schedule 1 to the EEA Regulations (which criticism was in any event not pleaded and raised only at the hearing). Schedule 1 is set out at [5] of the Decision.

40. There follows at [26] a lengthy paragraph dealing with the Respondent's decision and the Judge's view of the up-to-date evidence. The Judge was entitled to take into account what he viewed as a mischaracterisation of the nature of the offence in the Respondent's decision taking into account what was said by the sentencing Judge about the immaturity of the Appellant and his co-defendants and by the writers of the OASys reports about the influence of others on the Appellant. We accept that the Respondent could not have been aware of the progression of the Appellant's rehabilitation

between the OASys report before her at the time of her decision and the more recent OASys report which was before the Judge. However, the Judge had to take into account the most recent assessment of risk as it was for him to judge whether the risk was a "present" one. As the Judge points out the references to high risk of harm to the public is to the earlier OASys report (which is in fact dated November 2019 albeit retrieved electronically in March 2021).

41. Having considered the evidence, the Judge set out his reasoned conclusion in relation to the threat posed by the Appellant at [27] and [28] of the Decision as follows:

> "27. I must consider whether the appellant poses a genuine **present** and sufficiently serious threat affecting the fundamental interests of society (my emphasis). When considering how present the risk of harm the appellant poses is, I attach significant weight to the assessments set out in the most recent OASys report and the positive comments made about his attitude and behaviour while serving his sentence, much of which I have already set out. It is highly relevant that when he committed the serious offence for which he has been serving a sentence of imprisonment the appellant had only just turned 16 years old. The appellant's other criminal offending was also committed within the four month period after his 16th birthday. The appellant is now 20 years old and it is clear from the OASys report, the appellant's own evidence and the evidence from Deborah Solomons of Belong, that the appellant has matured significantly in the four years since his offence. It is also highly relevant that the OASys report values the likelihood of serious reoffending over the next two years at just 2.59%.
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> 28. Weighing all the evidence I find that the position the appellant is in now as he approaches his earliest release date is very different to the position the appellant was in when he committed the serious offence which raises the question of his threat to public safety. I find there to be compelling evidence that whilst the undoubtedly serious offence was committed naively by an immature 16 year old, the appellant has shown himself to have matured considerably and worked with agencies to prevent further offending and find settled employment. This work and maturity is reflected in the professional assessments of the Offender Manager in the OASys report. In the light of this compelling evidence I am not satisfied on the balance of probabilities that the appellant now presents a present threat to the fundamental interests of society. It follows from this that I do not find that are serious grounds of public policy present in this case and certainly not the imperative grounds of public security which would be necessary to justify the removal of the appellant from the United Kingdom."

42. It is difficult to see how this reasoning is in any way inadequate. Having directed himself in accordance with the EEA Regulations, having had regard to the public interest and public policy reasons for deportation and to the evidence, the Judge explained why he considered that the Appellant no longer posed a sufficient threat. His reasons are sufficient.

43. Whilst we accept that a low or medium risk does not equate to no risk as pointed out in the Respondent's grounds, the Judge was entitled to take into account the very low risk of serious recidivism (2.59%) as set out in the

latest OASys report when assessing the threat which the Appellant poses which must be not only "present" but also "sufficiently serious".

44. Again, whilst other Judges may have reached a different conclusion having assessed the case on the same evidence, it cannot be said that the Judge's conclusion is perverse.

45. Finally, we turn to the reliance placed in the grounds on "the ongoing importance of the principle described in Bouchereau" (referring to R v Bouchereau [1977] EUECJ R-30/77). Reference is made in the grounds to two cases in this regard. The first is Secretary of State for the Home Department v Robinson (Jamaica) [2018] EWCA Civ 85 ("Robinson").

46. The Respondent makes reference in her grounds to the Court of Appeal's conclusion in Robinson that Bouchereau remains good law and applicable in appropriate cases. However, she fails to cite the passage dealing with the sorts of cases to which it might apply. That appears at [85] and [86] as follows:

> "85. However, with all of that said, I am also of the view that the sort of case that the ECJ had in mind in *Bouchereau*, when it referred to past conduct alone as potentially being sufficient, was not the present sort of case but one whose facts are very extreme. It is neither necessary nor helpful to attempt an exhaustive definition but the sort of case that the court was thinking of was where, for example, a person has committed grave offences of sexual abuse or violence against young children.
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> 86. I would not wish to belittle the seriousness of the offence in the present case but it is not the sort of offence in which public revulsion at a past offence alone will be sufficient. I note that, in Straszewski, Moore-Bick LJ referred to 'the most heinous of crimes' at para. 17. That gives an indication of the sort of offence the ECJ had in mind when it said that a past offence alone might suffice. I also note that, in ex p. Marchon, the defendant was convicted of an offence of conspiracy to import 4½ kg of a Class A drug (heroin); he was a doctor; and he was sentenced to 11 years' imprisonment. As Moore-Bick LJ observed in commenting on that case in Straszewski, at para. 18, the offence had been described by this Court in ex p. Marchon as being 'especially horrifying' and 'repugnant to the public' because it had been committed by a doctor. In contrast, as the UT noted at para. 28 of its judgment in the present case, the sentence of 30 months' imprisonment that was imposed on this Respondent was at the lower end of the scale for offences of supplying Class A drugs."

47. Whilst not wishing to detract from the seriousness of the Appellant's offence, it does not fall into the category which the Court of Appeal describes. Similarly, the second case to which reference is made in the grounds is clearly of an entirely different nature. In the two conjoined cases to which reference is made ([2018] EUECJ C-331/16) the individuals concerned had been accused of crimes justifying exclusion from the Refugee Convention under Article 1F(a) (war crimes).

48. There is a further and more fundamental reason why the Respondent is unable to make out its assertion that the Judge's failure to follow this jurisprudence amounts to an error. This point was never raised as an issue before Judge Bulpitt. In spite of the very lengthy consideration given to the deportation of the Appellant by the Respondent (RB/170-187), there is no reference to Bouchereau. Nor is there any suggestion that the Appellant's past conduct in and of itself would justify deportation based on the public revulsion it has caused. The justification for deportation given is based on the threat alone.

49. The Respondent's ground two does not disclose any errors of law in the Decision.

CONCLUSION

50. For the foregoing reasons, we are satisfied that the Respondent has not shown that the Decision contains any legal error. We therefore uphold the Decision with the consequence that the Appellant's appeal remains allowed.

DECISION

The Decision of First-tier Tribunal Judge Bulpitt promulgated on 5 August 2021 does not involve the making of an error on a point of law. We therefore uphold the Decision with the consequence that the Appellant's appeal remains allowed.

Signed: L K Smith

Upper Tribunal Judge Smith

Dated: 15 February 2022