Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00386/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22nd March 2022	**On 21st April 2022**

Before

UPPER TRIBUNAL JUDGE KEITH
DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

ADRIAN JAWOROWSKI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Khubber, Counsel, instructed by Turpin & Miller LLP Solicitors
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. This is the remaking of the decision in the appellant's appeal against the respondent's decision on 17th July 2019 to deport him pursuant to the Immigration (EEA) Regulations 2016 ('the Regulations').

2. The appellant, a Polish citizen, claimed to have entered the UK on 14th June 2007 and shortly afterwards began to exercise treaty rights, working as a professional carer. Whilst the respondent had concerns that the evidence between 2011 and 2015 was not sufficient to cover employment for the whole of that period, there was also evidence that the appellant had claimed jobseeker's allowance. The respondent accepted in its deportation decision that the appellant had acquired a right of permanent residence under the Regulations but asserted that he was only entitled to the so-called 'serious grounds' level of protection (regulation 27(3)) under the Regulations, as his index offence and later imprisonment for that offence had broken any integrative links to the UK.

3. Before the index offence, the appellant received a police caution on 15th May 2010 for possession of 'class-A' drugs (cocaine) and after it, on 15th October 2017 for being drunk and disorderly.

4. On 25th October 2016, he committed the index offence for which he was later convicted of conspiring to facilitate the commission of a breach of the UK's immigration laws by non-EU persons, i.e., people trafficking.

5. Shortly afterwards, but before his conviction, he sustained a serious accident in work, on 8th February 2017, as a result of which he was electrocuted, fell and sustained injuries such that he lost consciousness.

6. On 26th November 2018, he was convicted at Canterbury Crown Court of the index offence and sentenced to three years' and four months' imprisonment. He was further convicted on 19th December 2018 of driving under the influence of a controlled substance (cannabis) for which he was fined £300 and banned from driving for 36 months. On 29th December 2018, the respondent issued the appellant with notice of liability to deportation order, to which he responded with representations. The respondent nevertheless decided on 18th July 2019 to make the deportation order, against which the appellant now appeals.

The First-tier Tribunal's decision

7. A Judge of the First-tier Tribunal, Judge Cohen, heard the appellant's appeal at Hendon Magistrates' Court and by a decision promulgated on 25th November 2019, allowed the appellant's appeal. As was noted in the subsequent Upper Tribunal error of law decision, whilst both parties accepted that the appellant had acquired the right of permanent residence at the time of his conviction and subsequent imprisonment, the parties disputed whether the appellant was entitled to 'serious' or 'imperative' grounds of protection. The judge did not accept that integrative links were broken and concluded that the appellant was entitled to 'imperative grounds' protection, noting his integration in the UK, including with close family members in the UK. The FtT also concluded that the appellant's removal would disrupt his significant efforts at rehabilitation and that deportation would be disproportionate, given what was described as his

lack of connections in Poland and having previously suffered discrimination there.

The Upper Tribunal's error-of-law decision

8. This Tribunal set aside the FtT's decision for reasons set out in the annexed decision. As recorded at §14 of the annexed decision, both representatives were agreed that the case of B v Land BadenWürttemberg (Case C-316/16) was authority for the proposition that a number of factors needed to be considered in making an assessment as to whether the appellant's integrative links were broken, as at the date of the deportation decision, which in the appellant's case included his residence of 10 years or more prior to his imprisonment and the integrative links developed in that period; the nature of his offence; the circumstances in which that offence was committed; and the appellant's conduct during his period of detention. Whilst the FtT had made reference to his cognitive behavioural therapy in prison and his hope of reconciliation, this Tribunal accepted the respondent's submission that the FtT's analysis was not adequate, as it did not analyse the quality and strength of integrative links which survived the appellant's period of imprisonment. Also, whilst the nature of the appellant's offence and risk that he posed on release might be relevant, there was inadequate analysis of the effect of imprisonment on the appellant's ability, on release, to continue his relationship with his former British partner and to maintain links with other family and friendship groups. In setting aside the FtT's decision, this Tribunal did so without preserved findings of fact or conclusions, including in relation to the assessment under Article 8.

9. Re-making of the decision was retained in the Upper Tribunal.

The hearing before us

10. We are grateful for the well-ordered bundles prepared by the parties' legal representatives and the relevant written submissions provided by the appellant's Counsel, Mr Khubber, both of which have assisted us. We were provided with two bundles of documents, which we identify as the appellant's bundle ('AB'); the respondent's bundle ('RB'); and separately, a loose, updated police national computer ('PNC') record which indicated the appellant's most recent criminal conviction for driving whilst under the influence of drugs. Without criticism of Mr Kotas, he had not provided a skeleton argument on behalf of the respondent but provided focussed and relevant oral submissions. We do not recite the submissions, unless necessary.

11. We heard evidence from the appellant alone, who adopted his evidence and was cross-examined by Mr Kotas. He did so without the need for an interpreter. At the beginning of the hearing, Mr Khubber indicated that the parties agreed that the appellant should be treated as a vulnerable witness for the purposes of the Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance, by virtue

of his PTSD. We explored with Mr Khubber what practical steps we should take to assist the appellant's participation in the hearing. He indicated that he was content that were a break in the proceedings necessary, either he or the appellant should indicate, and we were requested to accommodate this accordingly. We were happy to provide this assurance and confirmed to the appellant that if he needed a break he should say so. We were also conscious of the appellant's vulnerability with PTSD when assessing the credibility of his evidence, which we come on to discuss later in these reasons.

The agreed issues

Issue 1

12. Having identified the documents, we agreed with the representatives the issues that we were being asked to address. In relation to the appeal under the Regulations, Mr Kotas conceded that were we to find that the appellant had 'imperative grounds' protection under the Regulations, the respondent no longer contended that the deportation order should stand. In that context the question was therefore whether the appellant had 'imperative' grounds protection by virtue of continuous integrative links, working back from 10 years prior to the date of the deportation order of 17th July 2019.

Issues 2 and 3

13. Mr Khubber submitted that having decided what level of protection the appellant was entitled to, this in turn would inform whether, for the purposes of regulation 27(5)(c), the personal conduct of the appellant represented a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, (issue 2), taking into account the past conduct of the appellant and that the threat does not need to be imminent. In particular, what Mr Khubber submitted, and we accept, is that the 'sufficiently serious' level of the threat is informed by the level of protection. Mr Khubber's case was that even if the appellant were entitled only to 'serious grounds' level of protection, that his offending was not sufficiently serious and at a second stage, even if it were, his deportation was disproportionate (issue 3).

14. We explored with the representatives whether we needed to make a separate determination in respect of any claimed rights under Article 8 ECHR. Mr Khubber indicated that it may well be the case that any analysis under Article 8 would not yield a different result. He was concerned that the law in relation to how proportionality under Article 8, for the purposes of Section 117C of the Nationality, Immigration and Asylum Act 2002 would apply, was unclear. It was, he submitted, dangerous to apply the rubric in the same way in circumstances where, as an EEA national, the appellant was not a "foreign criminal" as defined under Section 117D of the 2002 Act. Such an analysis was therefore potentially fraught with complications, and he practically submitted that it would be simpler if we

limited our analysis and decision to the Regulations, albeit ultimately it was a decision for us. Mr Kotas indicated that a decision under the Regulations alone was likely to dispose of the matter. We have nevertheless concluded, for reasons that we set out later in this decision, that it is appropriate that we consider and resolve the human rights appeal.

The Law

15. We set out the relevant provisions of Regulation 27 and Schedule 1 of the Regulations as follows:

> "Decisions taken on grounds of public policy, public security and public health
>
> 27.- (1) In this regulation, a "relevant decision" means an EEA decision taken on the grounds of public policy, public security or public health.
>
> (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…..
>
> (5) The public policy and public security requirements of the United Kingdom include restricting rights otherwise conferred by these Regulations in order to protect the fundamental interests of society, and where a relevant decision is taken on grounds of public policy or public security it must also be taken in accordance with the following principles—
>
> (a) the decision must comply with the principle of proportionality;
>
> (b) the decision must be based exclusively on the personal conduct of the person concerned;
>
> (c) the personal conduct of the person must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, taking into account past conduct of the person and that the threat does not need to be imminent;
>
> (d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;
>
> (e) a person's previous criminal convictions do not in themselves justify the decision;

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

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

(8) A court or tribunal considering whether the requirements of this regulation are met must (in particular) have regard to the considerations contained in Schedule 1 (considerations of public policy, public security and the fundamental interests of society etc.).

SCHEDULE 1 CONSIDERATIONS OF PUBLIC POLICY, PUBLIC SECURITY AND THE FUNDAMENTAL INTERESTS OF SOCIETY ETC.

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. 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

(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; include—

(b) maintaining public order;

(c) preventing social harm….

(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);

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

16. We accept as uncontroversial a number of the principles identified by the representatives. As already indicated, consideration of integrative links needs to consider the continuum of the 10-year period working back from 17th July 2019 as a whole, including the nature of the Appellant's family and private life before his period of imprisonment; during the imprisonment and subsequently upon his release in July 2020. We further accept the principle the fact of imprisonment alone does not break integrative links and that relevant factors, as per the authority of Land BadenWürttemberg v Tsakouridis [2011] 2 CMLR 11, when considering integrative links, include the period of time spent by the appellant in the UK; the fact that the appellant has permanent residence; the age at which the appellant entered the UK (on his case, aged 20 in 2007); the nature of any work or employment carried out whilst in the UK; and the nature and quality of any family or private life whilst in the UK. The nature of the

appellant's offence and the extent of his involvement in that offence were also relevant, although, as Mr Khubber was keen to point out, his criminal conviction could not in itself justify the deportation decision (see Regulation 27(5)(e)).

17. In relation to an appeal by reference to Article 8 ECHR, the relevant statutory provisions from the Nationality, Immigration and Asylum Act 2002 (sections 117A to D) state:

> "**117A Application of this Part**
>
> (1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts—
>
> (a) breaches a person's right to respect for private and family life under Article 8, and
>
> (b) as a result would be unlawful under section 6 of the Human Rights Act 1998.
>
> (2) In considering the public interest question, the court or tribunal must (in particular) have regard—
>
> (a) in all cases, to the considerations listed in section 117B, and
>
> (b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.
>
> (3) In subsection (2), "the public interest question" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2)
>
> **117B Article 8: public interest considerations applicable in all cases**
>
> (1) The maintenance of effective immigration controls is in the public interest.
>
> (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
>
> (a) are less of a burden on taxpayers, and
>
> (b) are better able to integrate into society.
>
> (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
>
> (a) are not a burden on taxpayers, and
>
> (b) are better able to integrate into society.
>
> (4) Little weight should be given to—
>
> (a) a private life, or
>
> (b) a relationship formed with a qualifying partner,
>
> that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious……

117C Article 8: additional considerations in cases involving foreign criminals

(1) The deportation of foreign criminals is in the public interest.

(2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.

(3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.

(4) Exception 1 applies where—

(a) C has been lawfully resident in the United Kingdom for most of C's life,

(c) C is socially and culturally integrated in the United Kingdom, and

(d) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

(6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

(7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.

117D Interpretation of this Part

(1) In this Part—

"Article 8" means Article 8 of the European Convention on Human Rights;

…

(2) In this Part, "foreign criminal" means a person—

(a) who is not a British citizen,

(b) who has been convicted in the United Kingdom of an offence, and

(c) who—

(i) has been sentenced to a period of imprisonment of at least 12 months,

(ii) has been convicted of an offence that has caused serious harm, or

(iii) is a persistent offender.

Findings

18. We take much of the findings from the summary set out in the appellant's skeleton argument, but indicate where these are disputed and if so, how we resolve that dispute.

19. The appellant is a Polish national, born on 22nd September 1986 and is currently aged 35. He is of Roma ethnicity and has described suffering discrimination whilst in Poland, including his father being attacked. The respondent is not in a position to dispute the events of discrimination in Poland, although Mr Kotas submitted that the weight to be attached to any potential discrimination should be limited, on the basis that the claims are not corroborated and there is no evidence, beyond the appellant's oral assertions, that he would experience any repeat of discrimination on return to Poland.

20. The appellant asserts that he came into the UK in 2007 and almost immediately started working as a paid carer in 2007. Whilst the respondent did not expressly accept this in the deportation decision, the respondent accepts that not later than the period 2011 to 2015, the appellant had acquired permanent residence not least by virtue of claiming work-related benefits. The appellant has described continuously seeking to work, albeit with some periods of unemployment. As already referred to, the appellant received police cautions for possession of drugs (cocaine and cannabis in 2010) and being drunk and disorderly (October 2017) before his conviction for the index offence in 2018. He has continued to offend since the index offence, albeit for an offence which is relatively less serious (driving while under the influence of cannabis).

21. In evidence, (not all of which we accept), the appellant described that in or around 2009, his sister, Sarah Ciwinski also came to live in the UK, since when they have maintained regular contact. In particular, for an unspecified period they lived near one another in Hatfield. While they had not been in communication when he was in prison (starting in December 2018 and ending on 30th July 2020) except by letters (not provided) and telephone calls, they had re-established contact and he claimed to now see her twice a month. He also described having lots of cousins living in the UK, but named only one, his "main cousin", Radosov Tobe, who lived in Neasden, who had own decorating company and with whom he was now in regular contact, after his release from prison. He had a relationship with Katie Ober, whom he met in 2014. She is a British citizen and their relationship continued until he was arrested for the index offence. They were planning a future together, but Ms Ober sadly lost their baby through miscarriage and their relationship suffered. She did not visit him much whilst he was in prison. He asserts that even now, he was still in a relationship with Ms Ober, but his immigration status had affected her mental health. In particular, upon his release, he had briefly lived at her address, but she had asked him to move out. She currently had mental

health difficulties and was in hospital due to her mental ill-health. The appellant claimed that she had been sectioned under the Mental Health Act.

22. We pause, at this stage, to discuss our findings on the appellant's credibility. We are conscious that the appellant is a vulnerable adult and as a consequence may, for example, have difficulty in recalling specific dates or sequences of events. Nevertheless, a number of the appellant's assertions in his evidence were plainly contradicted by the detailed and updated OASys Report, a copy of which was at page [19] to [76] AB. We are also conscious that in considering this report, marked as updated on 11th March 2022, it may be a composite of both updated and also previous records. There is therefore a possible compression of events, so some of the events may be some time ago. However, it is also important to note that it has been updated as indicated by Ms Ginger, probation services officer, in an email of 11th March 2022 (page [18] AB). We would therefore expect that were a comment to be no longer accurate, this would be stated in the updated report.

23. The appellant had described having close and regular contact with his sister and his main cousin. However, when challenged as to whether this was correct and whether his sister had a substance abuse issue, as a result of which his relationship was not as close as claimed, he said that this was a private family matter and that he did not wish to discuss it. The OASys report had stated, at page [34] AB:

> "Mr Jaworowski has family that currently reside in Poland, and a sister living in Hertfordshire. He reports that his sister has substance misuse issues and so has an estranged relationship with her, although does have some contact. ..."

24. The appellant did not suggest that the comment was no longer up to date and that matters had since improved, rather that the comment was not accurate. We also bore in mind that the appellant has not provided a witness statement for his sister, nor has she attended this Tribunal to give evidence. Whilst he has indicated that she is pregnant and in hospital and therefore is unable to attend the hearing, we do not accept that the appellant, who is legally represented by experienced solicitors, would be unable to produce a witness statement for the appellant's sister. We find it more likely that his relationship with his sister was during the relevant period prior to the deportation order; during his imprisonment; and following his release, strained and there have been periods of estrangement. We find as unreliable the appellant's claim that he has regular and close contact with his sister.

25. In the same section of the OASys report, at page [34] AB, it refers to the appellant residing with Ms Ober for a brief period after his release from prison, after which she asked him to leave. The appellant asserted in oral evidence that they remain in a relationship. We considered whether this might, from the appellant's perspective, be by virtue of his desire to be in a relationship with her (he stated that he wished to marry her). It was

expressly put to him whether he continued to be in a relationship with her. He said that they were still in a relationship. That is plainly unsustainable in circumstances where, whilst they had previously been in a relationship for around six years, the appellant was recorded in the OASys report as stating that they were no longer in a relationship although he would like to be in a relationship with her (page [34] AB). The report continues:

> "Ms Ober permitted Mr Jaworowski to reside with her following release from custody for a short period of time. When a home visit was conducted, Ms Ober expressed her desire for him to live there short term due to her own personal circumstances and she was informed that alternative accommodation would be sought and support offered to Mr Jaworowski to find alternative accommodation. It was evident that Ms Ober cares for Mr Jaworowski as she has kindly offered support and speaks of wanting him to do well and move on with his life. ... Ms Ober is a definite positive factor for Mr Jaworowski and has genuine care and support with him. She has also attended various appointments with him which is a positive support factor for him. Ms Ober was no longer comfortable with Mr Jaworowski residing at her property and she reported she was not happy with whom he was associating and was unsure of how this may impact on her own accommodation. She expressed she wanted him to leave and he moved out. There has been no contact with Ms Ober since this time, however Mr Jaworowski reports they remained in touch although just as friends".

26. As a consequence, whilst the appellant asserts that they continue to be in contact and in a relationship, the OASys report is clear that they are in fact no longer in contact, let alone in a relationship. The appellant's evidence was that Ms Ober is currently being assessed under the Mental Health Act provisions in hospital and that is another reason why she has provided no evidence or attended this Tribunal. He specifically sought to ascribe blame or causation for her mental health issues to the actions of the respondent in relation to his own immigration status. We do not accept that there is any evidence on which we should make such a finding, nor is it necessary for us to do so. Whilst it may well be that Ms Ober is unwell and that explains her lack of a witness statement and her non-attendance at this Tribunal, we would expect there to be cogent evidence for the basis of ascribing causation for that mental health to the actions of the respondent. Even noting the absence of a witness statement from Ms Ober, it is plain that there is no existing relationship, in a romantic sense, between Ms Ober and the appellant.

27. In relation to ongoing contact with either friends or relatives whilst the appellant was in prison, we discussed with the appellant the absence of any records of regular contact, despite his oral evidence that, for example, he spoke to his sister and cousin on a regular basis whilst in prison and subsequently. We explored why, noting that that the appellant was legally represented, there was an absence of any telephone record logs indicating telephone calls or visitor logs indicating visits. The appellant indicated that he had not been in contact with members of his family whilst in prison because of the shame of his imprisonment, but that he had re-established regular contact since release. Mr Khubber made the submission that although none was provided in the appellant's bundle, the appellant's

cousin had in fact provided a witness statement about their ongoing contact and relationship.

28. The appellant explained that he had been advised by his solicitor that because the appellant's cousin was unable to attend the hearing today as he had business meetings, and because any potential witnesses, including his cousin, would need to provide identification documents with their witness statements, which they could not, limited weight would be attached to those statements and so they had not been produced. In response, Mr Kotas asked us to consider that the appellant's solicitors must have known of the importance of documentary evidence beyond the appellant's own oral evidence as to friendships and family contact.

29. We accept Mr Kotas' submission that the stark absence of evidence before us lends support for the absence of any meaningful contact with family or friends during the appellant's period of imprisonment. Moreover, the appellant himself accepted in cross-examination that he had limited friendship groups, and this was reflected in the OASys Report at page [64] AB where the report refers to the appellant having no "clear friendships" and his "*currently pro-criminal attitude may be attributed to his associates.*" Prior to the appellant's index offence, he associated with people described as friends (page [45] AB) who became his criminal associates and co-defendants. The appellant had initially attempted to deny that he knew any of the other co-defendants other than a Mr Clynch (page [44] AB). He later accepted that his friends had put him in the position in which he found himself resulting in his conviction. The OASYs report noted at page [58] AB:

> "Mr Jaworowski does not have access to regular income but is reportedly borrowing considerable amounts of money from 'friends' to support himself financially. There are concerns over the validity of his self-employment and he does not elaborate on where he is borrowing money from. His ex-partner asked him to leave the accommodation she permitted him to stay in due to worries over his association with previous associates, which she viewed as negative. Given his previous potential exploitation and current potential association with pro-criminal associates, there is a concern over exploitation and committing offences to support himself financially".

30. These remarks relate to the appellant's release in July 2020, when it appears that the appellant has re-established friendships, albeit the likelihood is that it is with previous associates to whom he is now indebted.

31. In summary, we prefer the evidence of the OASys report to the appellant's oral evidence, in a number of key respects. The first, already mentioned, is his claim to be in a continuing relationship with Ms Ober. They were in a relationship, but any contact during the appellant's imprisonment was limited (there are no contact logs) and there is no contact now. Second, we do not accept his claim to be in a close and ongoing relationship with his sister. Their relationship is strained, with periods of estrangement, which the appellant was unwilling to discuss. Third, there is limited evidence about the appellant's relationship with his cousin, and while

noting the reference to a witness statement which has not been adduced, we do not accept as reliable his claim to have a close and regular contact with that cousin. The appellant accepted in his own evidence that his relationships with his family (cousin and sister) were limited further during his imprisonment, as a result of his sense of shame. We find that given his already weak relationships with his UK family, other than Ms Ober, the appellant has not re-established any meaningful relations with UK family members.

32. There is at least some evidence (albeit limited) of ongoing friendships, subject to the aspect we have already described of the pro-criminal associations these friendships may entail.

33. In relation to the risk of reoffending, we bore in mind the concerns identified by the OASys assessor, which we also considered in the context of the appellant's assertion that because of his current work, he had the motive not to reoffend, notwithstanding his less serious recent offence. We were referred to details of the appellant's income, and a tax return showing net income for the financial year 2020/2021 of £5,715 (pages [13] to [16] AB). Bearing in mind that he was not released until 30th July 2020, this represents 8 months' work to the end of the tax year. Despite being specifically asked, the appellant was unwilling to disclose the precise amount of his debts owed to friends, but he described them as substantial, albeit he was paying them back. We also bore in mind that there were numerous references in the OASys report to the appellant complaining of an inability to pay his rent and also to pay for his heating bills which he had found particularly frustrating, which indicate financial difficulties, relevant to the risk of resulting reoffending.

34. Nevertheless, there is a clear pattern of the appellant working prior to the index offence in 2016 and at least during the period of appellant's industrial injury (8th February 2017). This is consistent with the national insurance records provided at pages [198] to [120] AB, which show consistent periods of work albeit with relatively limited income and frequent jobseeker allowance benefit credits. The limited income reflected in the national insurance records is likely to be explained by the appellant's willingness to work 'cash in hand'. When asked by the OASys assessor to produce receipts for jobs he had completed whilst working, the appellant initially stated that he had spoken to a solicitor who advised that he did not have to provide these records (page [32] AB). However, he then produced a bank statement with some of the payment receipts from the same person and only for a limited period in December 2020. The appellant then asserted that because he was unable to apply for benefits and he had to earn money to survive, he may end up resorting to working 'cash in hand'. In summary, we accept that the appellant has a consistent pattern of working up to the period of his imprisonment and after his release and that his work which generates that income may well be more substantial than the limited income identified in his national insurance record, which in some years indicated income as little as around £1,300 to £2,500 a year.

35. We accept that the appellant is motivated to earn money in the future, not least because of his desire to support his ill father in Poland and if possible, to arrange for his father to come and live with him in the UK. We accept Mr Khubber's submission that while the appellant has an adversarial attitude towards figures in authority and a strong sense of victimisation (see page [45] of the OASys report, which referred to the appellant seeking to blame staffing agencies for his current circumstances, being convinced that there was a personal vendetta against him in relation to accommodation), the appellant is also motivated to comply with the law in future, in light of his desire to earn sufficient income to provide financial support for his father in Poland, who is currently said to be gravely ill.

36. We also bear in mind that all of the negative factors were assessed by the OASys assessor. In particular, the analysis stated (page [59] AB):

> "R10.1 Who is at risk.
>
> Members of the public are at risk. Most likely this would be other adults who are seeking illegal support for transportation. There will be no other specific characteristics, as those providing money for illegal transportation can come in all age ranges and be of both genders. Members of the public who are at risk of financial harm should Mr Jaworowski commit offences by obtaining money illegally by potentially pretending to provide a service that is legitimate. This will be likely come in the form of adults looking to have work done in their homes or having their dog attended to by someone who is not a professional. Other future victims of crime should Mr Jaworowski commit any further offences against a person in order to obtain money. There would be no targeted victims or particular characteristics, this would apply to anyone who may fall victim to his offending behaviour.
>
> What is the nature of the risk
>
> Public
>
> The nature of the risk is financial/physical and emotional harm. The victims would initially see money handed over prior to their journey, whilst potentially being subjected to psychological harm by being transported in treacherous conditions that could lead to physical harm, including death.
>
> The risk of financial harm. The victims would be subjected to illegal work, unprofessional work for the purposes of Mr Jaworowski making financial gain ... Should Mr Jaworowski be forced to carry out criminal activity by peers, this could include a range of offences."

37. The reoffending risk score for serious recidivism was described as low (0.34%). The likelihood of serious harm in the community more generally was assessed as being medium (page [62] AB).

38. The OASys assessor also identified the appellant's negative and hostile feelings towards anyone in authority (page [66] AB) which, as Mr Kotas points out, the appellant will not be supported to address, as his licence supervision is soon due to expire. However, the report also confirms (at page [60] AB):

> "Mr Jaworowski's OGRS, OGP, OVP and RSR [various risk assessment scores] are all low….It is my assessment that given the low actuarial assessments,

> the number of previous offences and the escalation in seriousness from the previous offences the risk of harm is currently medium. Although Mr Jaworowski does have supportive family in Poland there is little evidence to suggest that Mr Jaworowski's associations in England are positive and he has not given us much information about this. Although it is positive that Mr Jaworowski does currently have a job that pays his bills and this reduces the likelihood of him reoffending".

39. Whilst the appellant clearly worked before the period of his imprisonment, his friendship groups appear to be pro-criminal associations and the evidence of continuing integration whilst in prison is mixed. We bear in mind the positive correspondence of October 2019, from the education department of HMP The Mount, at pages [320] to [321] AB; to his credit, the qualifications obtained at pages [322] to [325] AB; but also the six prison adjudications at pages [190] to [195] AB, in the period 18 December 2018 (almost immediately upon imprisonment) to June 2019 which includes threatening, abusive, or insulting words or behaviour and possession of a controlled drug. In oral evidence, the appellant sought to justify his threatening behaviour as being necessary in order to defend himself from those who threatened to harm him. The adjudications covered a substantial part of his imprisonment, and cross-over with the letters from the prison educational department referring to the appellant having made a conscious effort to integrate himself into all aspects of life in the UK, with clear engagement in English language courses.

Applying the law to the facts

Whether integrative links continued from 2009 to 2019

40. We accept (and the respondent does not dispute) that prior to the index offence in question the appellant was integrated into the UK, having entered in 2007 and having had permanent residence recognised, before he committed the index offence in October 2016. He was not imprisoned until December 2018. Noting the authority of Hussein v SSHD [2020] EWCA Civ 1546, the questions were whether the appellant had 10 years' continuous lawful residence ending with the deportation decision in 2019 and whether he was sufficiently integrated within the UK during that 10-year period.

41. While accepting that the appellant was integrated before the index offence, we still need to consider the nature and quality of that integration.

42. In relation to family life, we regard his claims of ongoing close family relationships with his sister and cousin as exaggerated and unreliable, for the reasons already outlined. However, from 2014, he had a romantic relationship with Ms Ober, (she was pregnant by him) which (just) endured while he was in prison (the OASys assessor described her as supportive of him during this period, even though the contact was very limited) and shortly after his release in 2020, even if that relationship has now ended.

43. In relation to other areas of integration, the appellant has regularly worked, and we accept that he will have built up a network of professional contacts during those employments. He has lived in the UK since 2007, so those work relationships have developed over many years. He has continued to work on his release in July 2020. As we have noted, aside from work relationships, there is at least some evidence of ongoing friendships, subject to the aspect we have already described of the pro-criminal associations these friendships may entail.

44. We are very conscious of the index offence and the role played by the appellant in it. The Sentencing Judge considered that the appellant only had cautions for previous offences and pleaded guilty on the first day of the trial, in contrast to his conspirators. That being said, the nature of the offence, people-trafficking, was serious and pre-planned, albeit that the appellant was not involved in the planning. While not the ringleader, and receiving the lessor sentence of the conspirators, the appellant was described as integral to the execution of the plan. We attach significant weight, as counting against the appellant, in respect of the offence, given its nature. The appellant continues to have oppositional attitudes to those in authority. He had a number of adjudications while in prison, including a refusal to obey an order. He had, and continues to have, pro-criminal associates. He only recently admitted personal responsibility for the index offence. He remains a medium risk of harm to the community (albeit a low risk of serious recidivism). In the appellant's favour, we note the favourable assessments of the appellant's integration by the prison education authorities.

45. In conclusion, we are (just) persuaded that the appellant's integrative links were not broken as a result of the index offence and his imprisonment. We say this, without condoning in any way the index offence. Looking at the overall circumstances, the appellant's pattern of work and friendships have endured despite his offence and imprisonment, as did, at least initially, his family life with Ms Ober. The pattern of work, at least, is deep-rooted and developed over the years since 2007 and will, we have no doubt, endure. We place weight on the fact that the appellant had such a pattern of regular work from 2007, for more than 11 years until his imprisonment in December 2018. Given the overall circumstances, we conclude that the appellant was entitled to "imperative grounds" protection under the Regulations. It follows, as Mr Kotas accepted, that the appellant's appeal succeeds under the Regulations.

46. For completeness, we have considered in the alternative what we would have decided, had we concluded that the appellant was only entitled to 'serious grounds' protection.

Genuine, Present and Sufficiently Serious Threat

47. As before, we reiterate that we do not in any way seek to condone the crime of people-trafficking. The impact on the victims of such trafficking

and on the fundamental interests of society are clear. We take into account the appellant's conduct of involvement in that crime.

48. We turn again to the OASys report. We accept Mr Khubber's submission that the danger in focusing only on the negative elements in the OASys report is that the analysis becomes skewed. The assessor considered all of the relevant factors including the negative ones and had concerns about the appellant's ongoing pro-criminal associations; his lack of insight and acceptance of responsibility; his hostility towards figures of authority; and the risk if he were to be financially challenged in future. However, the same assessor also considered the stabilising factor of the appellant's employment and his ability to repay his creditors. We are conscious that the risk in the community generally was assessed as being 'medium'. However, assuming 'serious grounds' protection, we note the relatively minor role that the appellant played in the index offence, as reflected in his prison sentence and the fact that it was a single offence of this nature, with all of the other offences being relatively minor drug or alcohol related offences. We take into account the appellant's clear motivation in seeking to comply with the law in future as identified by the OASys assessor, which confirmed that if he has a successful appeal decision this would mitigate the risk. We are satisfied that although present and genuine, the risk would not, on balance, be sufficiently serious (it would most likely result in more minor offences). Mr Kotas confirmed that if we were to reach this finding then he accepted that the appeal should succeed.

Proportionality under the Regulations

49. However, for further completeness, we have also considered a proportionality assessment under regulation 27 and also schedule 1 of the Regulations. Mr Khubber urged us not to be bound in any way by a prescriptive list under schedule 1 but nevertheless we have considered for the purpose of proportionality the following factors as set out in the skeleton argument. We reiterate again our consciousness of the nature of his offence. We take into account the risk of harm (if it materialises) as medium and the serious risk of recidivism (low). In his favour, we take into account that he has been continuously resident in the UK since in or around 2007, by now a period of 15 years. He has a pattern of work, albeit interrupted by a period of industrial injury and he did not work during the period of his imprisonment. The appellant was socially and culturally integrated into the UK prior to his imprisonment, which has continued on his release. We take into account his PTSD as a result of his industrial injury and the possible impact of this on his ability to integrate into Poland, where he has not lived since 2007, as well as his limited family there (a gravely ill, impoverished father). Even if we had concluded that the appellant's personal conduct did represent a sufficiently serious threat which would clearly affect one of the fundamental interests of society, namely the prevention of human trafficking, in this particular instance, we would have concluded that given the one-off nature of the offence; the appellant's relatively limited role in the offence; the limited connections the appellant has with Poland; the likely barriers on his reintegration there

and his integration in the UK, that his removal would be disproportionate for the purposes of the Regulations.

The human rights appeal – discussion and conclusions

50. While both representatives suggested to us that it was unnecessary for us to decide the appellant's appeal on human rights grounds, we concluded that it was necessary. We reached this conclusion for a number of reasons.

51. First, there was an appeal by us by reference to the appellant's human rights. It has not been abandoned.

52. Second, the respondent's appeal to this Tribunal was originally on the basis that the FtT had failed to make a decision in respect of human rights. The appellant's skeleton argument specifically maintained that the appeal should succeed on the basis of human rights.

53. Third, our decision on the human rights appeal may well be relevant in the context of the transitional provisions relating to EEA nationals and Appendix EU of the Immigration Rules.

54. Fourth, whilst Mr Khubber submitted that the application of sections 117C to D of the 2002 Act to an EEA deportation case was fraught with complications and an absence of legal guidance, even if his submission were correct, sections 117A to B would clearly be applicable and we can instead consider a classic 'balance-sheet' approach, which will inevitably consider some, if not all of the same factors set out in sections 117C to D.

55. Fifth, we considered further Mr Khubber's submission that appellant was not a 'foreign criminal' the purposes of section 117D of the 2002 Act. Reflecting on the definition cited above, we do not see how that submission is sustainable. Even if the deportation order is not one made by virtue of the automatic deportation provisions of the Borders, Citizenship and Immigration Act 2007, (a point not made, but which we have considered for completeness, for why section 117C would not apply), Part 5A of the 2002 Act reflects the "domestically refined approach" to public interest decisions which a Tribunal is required to take into account when considering article 8 in a deportation appeal, namely the public interest question, see §21 of Zulfiqar v Secretary of SSHD [2022] EWCA Civ 492. In summary, there is no logic for not considering sections 117C and D.

56. In this context, the appellant is a 'mid-tier' offender for the purposes of section 117C(3), given the length of his sentence (less than four years). He has not been lawfully resident in the UK for most of his life and so cannot meet 'Exception 1' (section 117C(4)(a)) although we accept that he remains socially and culturally integrated in the UK. Taking the appellant's case at its highest, we are prepared to accept that given societal discrimination in Poland towards those of Roma ethnicity; the appellant's limited contacts in Poland (notwithstanding the references to a supportive

family there referred to in the OASys report, which in reality comprises the appellant's father, who is ill and without financial resources); and the period of time that the appellant has been absent from Poland, and despite his ability to work, there would be very significant obstacles to his integration in Poland. Those obstacles would substantially hinder him to integrate as an "insider."

57. The appellant does not have a genuine and subsisting relationship with Ms Ober and so cannot meet Exception 2 (section 117C(5)).

58. The next question is therefore whether there are 'very compelling circumstances' over and above Exceptions 1 and 2 (section 117C(6)). We conclude that there are not. Unlike protection from deportation under the Regulations unless there are 'imperative' grounds, we start with the public interest being in the appellant's deportation. Even reflecting the appellant's one-off lesser role and corresponding sentence, the crime of people-trafficking must be a significant weight against the appellant. Whilst his risk of reoffending in relation to a serious crime is low, we do not accept that he is rehabilitated, given his clear antagonism towards those in authority and his continued offending. Such rehabilitation would not be disrupted by virtue of his deportation where his licence supervision is due to end shortly. Whilst the appellant has established a private life in the UK in the form of limited friendships, albeit with pro-criminal associations and the appellant has a strong work ethic, these, combined with the obstacles to integration in Poland, do not in our view begin to outweigh the significant public interest in his deportation. We reached this conclusion by reference to the rubric of 'very compelling circumstances.'

59. A wider article 8 assessment would not yield a different result. He has, until the deportation order, always had leave to live and work in the UK and we do not attach limited weight to the private life established. He is able to speak English (section 117B(2)). Given his limited declared income, he has been a burden on the UK taxpayer through tax credits, even when working, albeit we do not attach significant adverse weight to this. On balance, weighing on the one hand his private life as we set out in detail already (and so do not repeat) and the obstacles to integration in Poland; with the weight we attached to the appellant's offence and the lack of rehabilitation, this ultimately results in the same conclusion that deportation is proportionate for the purposes of Article 8 ECHR.

Conclusions

60. On the facts established in this appeal, the respondent's deportation breaches the appellant's rights under the Immigration (EEA) Regulations 2016.

61. However, the appellant's appeal fails on human rights grounds.

Decision

62. The appellant's appeal against his deportation under the Immigration (EEA) Regulations 2016 is allowed.

63. The appellant's appeal on human rights grounds fails and is dismissed.

Signed: J Keith

Upper Tribunal Judge Keith

Dated: **21st April 2022**

ANNEX: ERROR OF LAW DECISION

IAC-FH-LW-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00386/2019

THE IMMIGRATION ACTS

Heard at the Royal Courts of Justice	**Decision & Reasons Promulgated**
On 10 February 2020	**On**

Before

UPPER TRIBUNAL JUDGE KEITH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ADRIAN JAWOROWSKI

Respondent

Representation:
For the appellant: Mr S Kotas, Counsel
For the respondent: Mr R Khubber, Counsel

DECISION AND REASONS

Introduction

1. These are a written record of the oral reasons given for my decision at the hearing.

2. This is an appeal by the appellant, who was the respondent before the First-tier Tribunal, and who I will refer to as the Secretary of State. The respondent was the appellant before the First-tier Tribunal, and to avoid

confusion, I will refer to him as the Claimant. The Secretary of State appeals against the decision of First-tier Tribunal Judge Cohen (the 'FtT'), promulgated on 25 November 2019, by which he allowed the Claimant's appeal against the Secretary of State's refusal of his appeal under regulation 36 of the Immigration (EEA) Regulations, against his deportation. While both parties accepted that the Claimant had acquired the right of permanent residence at the time of his conviction and subsequent imprisonment for facilitating breaches of UK immigration law (people-smuggling Albanian nationals), for which he was sentenced to 3 years and 4 months, the Secretary of State considered, in her decision dated 17 July 2019, that the Claimant's integration and ties to the UK were not significant, despite his presence in the UK for more than 10 years prior to his imprisonment and that he was not socially and culturally integrated into the UK. The Secretary of State therefore applied the 'serious' rather than higher 'imperative' grounds test under the EEA Regulations.

3. The Secretary of State noted the seriousness of the Claimant's most recent conviction; and his adjudications while in prison, using threatening words or behaviour to staff and a drugs infringement. The Claimant could use any experience of work to reintegrate into his country of origin, Poland; he was only 32; and could seek the assistance of the Polish authorities on his return. The Secretary of State concluded that deportation was proportionate and would not damage the prospects of his rehabilitation.

The FtT's decision

4. The FtT allowed the Claimant's appeal, concluding that:

    4.1. He was entitled to higher, 'imperative grounds' protection, noting his integration in the UK, including close family members in the UK;

    4.2. His removal would disrupt his significant efforts at rehabilitation;

    4.3. His removal would be disproportionate, noting the disruption to his rehabilitation; correspondence from Offender Management staff expressing a provisional view that he was a low risk to the public; his lack of connections in Poland; and having previously suffered discrimination there, as someone of Roma ethnicity.

    4.4. His removal would breach his rights under article 8 of the ECHR, in respect of his family and private life, although there was also a suggestion that he had no family life in the UK ([41] of the FtT's decision). The FtT did not refer to section 117C of the Nationality, Immigration and Asylum Act 2002, although he referred to section 117 more generally.

The grounds of appeal and grant of permission

5. The Secretary of State lodged grounds of appeal which are essentially:

5.1. (1) in applying 'imperative grounds' protection, the FtT failed to count back from the date of the deportation order (see SSHD v MG [2014] EUECJ C-400/12;

5.2. (2) the FtT had failed to explain why a crime resulting in a prison sentence of 3 years and 4 months would not meet the test of 'serious grounds' of public security, noting the particular nature of the offending, namely people-smuggling;

5.3. (3) the FtT had erred in his analysis of the risk of reoffending on release, noting that the Claimant had yet to be released;

5.4. (4) the FtT had failed to analyse adequately the proportionality of the Claimant's removal;

5.5. (5) the FtT failed to consider section 117C(3) of the 2002 Act in respect of the Claimant's human rights.

6. Designated Judge Macdonald granted permission to appeal on 19 December 2020, indicating that all grounds disclosed arguable errors of law.

The hearing before me

The Secretary of State's submissions

7. While the Secretary of State noted the length of time in which the Claimant lived in the UK, such that he had permanent residence, which the FtT was entitled to consider, the heart of the FtT's error lay in his failure to consider the extent to which integrative links had been broken. Indeed, what FtT's analysis was limited to [36] of his decision:

> *'The appellant has lived in the UK for in excess of ten years and I find that he has integrated into this country. He has very little in the way of connections with Poland.'*

8. Both representatives had referred me to B v Land BadenWürttemberg (Case C-316/16), which was authority for the proposition that regardless of whether a person was presumed to have had prior integrative links by virtue of having lived in the UK for 10 years, in addition, I needed to consider whether those links were broken by the period of imprisonment, by the date of the decision to deport the Claimant in 2019. Both representatives accepted that there were a variety of factors that I needed to consider on that issue, including the fact that the Claimant had lived in the UK for 10 years prior to his imprisonment; the nature of the family life prior to the period of imprisonment; the nature of offending; the conduct of the Claimant whilst in prison; and his attempts at rehabilitation. B gave guidance on this, which the FtT had failed to consider, apply, or explain his reasons adequately.

9. Mr Kotas submitted that whilst the FtT had referred to a relationship between the Claimant and a British citizen woman, which the couple wanted to re-establish, only the Claimant had provided a witness statement; not only had no other family member attended the FtT hearing, but the claimed partner had not provided a witness statement or had attended. The Secretary of State had expressly disputed the ongoing existence of family life in the original decision to deport the Claimant and the FtT had failed to resolve this dispute.

10. The remainder of the grounds flowed from the error to consider and apply 'serious' rather than 'imperative' grounds, but even under the 'imperative grounds' test, the FtT's analysis was inadequate. For example at paragraph [37], whilst the FtT had compared the Claimant's case with the well-known authority of Tsakouridis (European citizenship) [2010] EUECJ C-145/09, stating that the Claimant had only been convicted of one offence and was not involved in organised drug dealing or in a group of activity, this ignored the fact that the Claimant was involved in an organised activity of people smuggling, which in itself was the first on the list of the fundamental interests of society in Schedule 1 of the 2016 Regulations. The FtT's analysis in these circumstances had been inadequate. The FtT had failed to take into account that the Claimant remained in prison and that any attempts at rehabilitation, described as 'substantial,' were in reality limited to a small number of courses undertaken by the Claimant while in prison.

11. This therefore led to another error by the FtT in his analysis of whether the Claimant's conduct represented a genuine, present and sufficiently serious threat, affecting one of the fundamental interests of society. The FtT had failed adequately to consider the serious nature of the Claimant's offence; and the brevity of a provisional view of the Offender Management as to the risk posed by the Claimant (single sentence in a letter), which made clear that they had not yet been able to assess him; and the very limited evidence of rehabilitation. While the FtT's reasons were bound up together, the FtT had conflated whether the Claimant met the threshold of 'seriousness' as opposed to 'imperative' grounds with whether he posed a sufficiently serious threat under regulation 27(5) of the 2016 Regulations. Mr Kotas suggested that there was no need for me to consider, at this stage, the errors in relation to article 8 ECHR.

The Claimant's submissions

12. Mr Khubber submitted that the Secretary of State's appeal was one of form over substance, as the only basis on which the Claimant could be deprived of protection on the 'imperative' as opposed to 'serious' grounds, were if integrative links were broken, given the period of time during which the Claimant had lived in the UK. The case of B, to which I have already referred, was authority for the proposition that a period of imprisonment alone was not sufficient to break integrative links and instead there had to be consideration of a variety of factors. If, at its highest, the FtT's error was said to be a failure to expressly state that integrative links had not

been broken, this was a challenge of form over substance, as the FtT had adequately explained the nature of the prior integrative links and the FtT's reference to the Claimant having continuous links was an assessment by the FtT, made at the date of his decision.

13. The FtT had expressly considered the evidence put before him, including the Offender Management letter; the fact of the existence of family in the UK, which was not disputed; and the circumstances of the offence.

Discussion and Conclusions

14. Both representatives were agreed that the central issue, in this appeal before me, was whether the FtT had made a clear findings and adequately reasoned conclusions as to whether the Claimant's integrative links were broken. Both representatives were also agreed that the authority of B was authority for the proposition that a number of factors needed to be considered in making that assessment, as at the date of the expulsion decision, including the Claimant's residence of 10 years or more prior to his imprisonment and the consequential integrative links prior to his imprisonment; the nature of his offence and the circumstances in which that offence was committed; and the Claimant's conduct during his period of detention.

15. I concluded that the FtT did not provide a sufficiently explained, or adequate analysis, of why the Claimant's prior integrative links were unbroken, following his imprisonment. While I accept that the FtT made reference to the Claimant's cognitive behavioural therapy while in prison; and his hope of reconciliation with his partner on release, I accept Mr Kotas's submission that the FtT's reasoning, at [36], to which I have already referred, focused on his presence in the UK prior to imprisonment, without analysing how the quality and strength of those integrative links survived the Claimant's period of imprisonment. Mr Kotas posed the practical question of what social and family network the FtT had believed that the Claimant would, on release from prison, return to. Instead, at [36], the FtT concluded that the Claimant had lived in the UK for in excess of ten years and had integrated into the UK. The FtT then immediately moved on to note the Claimant's limited links to Poland and an assessment of whether the Claimant posed a genuine, present and sufficiently serious threat.

16. While the nature of the Claimant's offence and the risk that he posed on release might be relevant, there was, in my view, an inadequate analysis of the effect of imprisonment on the Claimant's ability, on release, to continue his relationship with his former British partner, who provided no evidence to the FtT; and to maintain links with other family and friendship groups. Where the analysis of maintenance of integrative links is so brief, at [36], I am not satisfied that the FtT would, on an adequate analysis, reach the same conclusion. In the circumstances, I regard the inadequacy of the analysis as amounting to an error of law, such that the decision of the FtT cannot stand and must be set aside. In setting aside

the FtT's decision, I do so without preserving any findings of fact or conclusions, including in relation to the assessment under article 8.

17. Given that the Secretary of State's appeal succeeds on ground (1) and this underpins the entirety of the FtT's findings and analysis, including in relation to proportionality, I regarded it as unnecessary to reach conclusions on grounds (2) to (5).

Disposal

18. Given the narrowness of the factual and legal issues which needed to be remade, I agreed with the representatives that it was appropriate and in accordance paragraph 7.2 of the Senior President's Practice Statements that the Upper Tribunal remakes the decision on the Claimant's appeal. As the Claimant was not presented for the error-of-law hearing, I regarded it as appropriate to adjourn the remaking hearing to a date on which the Claimant can be presented from prison.

Directions

19. The following directions shall apply to the future conduct of this appeal:

    19.1. The Resumed Hearing will be listed before Upper Tribunal Judge Keith or any other Upper Tribunal Judge sitting at the Royal Courts of Justice on the first available date after 1 June 2020, to accommodate the availability of Mr Khubber, time estimate 3 hours, to enable the Upper Tribunal to substitute a decision to either allow or dismiss the appeal.

    19.2. The Claimant shall no later than 14 days prior to the Resumed Hearing file with the Upper Tribunal and served upon the Secretary of State's representative a consolidated, indexed, and paginated bundle containing all the documentary evidence upon which he intends to rely. Witness statements in the bundle must be signed, dated, and contain a declaration of truth and shall stand as the evidence in chief of the maker who shall be made available for the purposes of cross-examination and re-examination only.

    19.3. The Secretary of State shall have leave, if so advised, to file any further documentation she intends to rely upon and in response to the Claimant's evidence; provided the same is filed no later than 7 days prior to the Resumed Hearing.

    19.4. No anonymity direction is made.

Notice of Decision

The decision of the First-tier Tribunal contains material errors of law and I set it aside, without preservation of findings of act.

Signed J Keith Date: 14 February 2020

Upper Tribunal Judge Keith