



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-005304**  
**First-tier Tribunal No:**  
**EA/51054/2021**  
**IA/11252/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 18 August 2023**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**Mr Jaddou Ferris Adnan Suleiman**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Ms C Warren, counsel instructed by Sabz Solicitors LLP  
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

**Heard via MS Teams on 20 July 2023**

**DECISION AND REASONS**

Introduction

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Lewis heard on 23 June 2022. Permission to appeal was granted by Upper Tribunal Judge Jackson on 6 December 2022.

Anonymity

2. No anonymity direction was made previously, and there is no reason for one now.

Factual Background

3. The appellant is a German national now aged fifty. He has an extensive criminal record for offences committed in Germany between 1985 and 2017 which include

rape and grievous bodily harm. He first arrived in the United Kingdom during October 2011 but was returned to Germany to serve the remainder of a prison sentence for rape. It is unknown when the appellant returned to the United Kingdom, how often he returned or for what duration, albeit his wife and children were living here. A deportation order was signed in respect of the appellant on 24 November 2015. The appellant's appeals, brought following the refusal of his admission to the United Kingdom, were exhausted on 10 May 2018. On 7 October 2020, the appellant applied for the deportation order to be revoked.

4. By way of a decision dated 24 March 2021, the respondent set out her reasons for refusing to revoke the deportation order with reference to Regulation 34 of the Immigration (European Economic Area) Regulation 2016. Essentially, the respondent concluded that there were no material changes in the appellant's circumstances, that he had a propensity to re-offend and that he represented a genuine, present, and sufficiently serious threat and posed a serious risk to the safety of the public.

#### The decision of the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, the appellant's wife gave evidence. The judge accepted that the passage of time amounted to a material change of circumstances but concluded that decision to maintain the deportation order was in accordance with the principles set out in Regulation 27 and that it was proportionate.

#### The grounds of appeal

6. The grounds of appeal were that the Tribunal made the following errors.
  - i. Misdirecting itself as to regulation 27(5)(b) of the 2016 Regulations and excluded consideration of the health of the appellant's children as well as matters in regulation 27(6).
  - ii. Failing to take account of the material matters referred to in the first ground.
  - iii. Failing to apply the respondent's policy correctly.
  - iv. Taking into account of immaterial matters, namely the effect of deterrence.
7. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

It is arguable that the First-tier Tribunal has erred in law in the final proportionality balancing assessment required by failing to take into account the Appellant's family circumstances and in particular the best interests and health of his children; with only a single paragraph dealing with the issue of proportionality. It is not entirely clear whether this matter has been excluded for the reasons set out in paragraphs 26 to 31 which appear to deal only with whether there has been a material change of circumstances or whether this was applied more widely to the question of proportionality, but either way, it is arguable that these matters should have been taken into account. The third ground of appeal is not material given that whether or not the Respondent's policy was wrongly taken into account, it was only in relation to whether there was a material change of circumstances, a matter which was decided in the Appellant's favour. However, I do not exclude it from the grant of permission given the other arguable grounds. The fourth ground of appeal is weak, but I do not exclude it from the grant of permission.

8. The respondent did not file a Rule 24 response.

#### The error of law hearing

9. Mr Walker confirmed that there was no Rule 24 response in existence but that he was opposing the appeal. Ms Warren followed the format of the grounds of appeal drafted by Mr Homes of counsel and made detailed submissions. In essence, the first and second grounds concerned what was she described as the manifestly inadequate assessment of the appellant's family circumstances including the best interests of his three children in carrying out the proportionality assessment. Ms Warren did not say much about the third ground other than what was contained in the grounds as to the judge's reliance on the respondent's policy to interpret the Regulations, stating that this alleged error was material as it was used to justify the judge's exclusion of the best interests of the children from his consideration. Lastly, the judge had wrongly referred to matters of public revulsion whereas this was not the type of exceptionally serious case where an exception could be made, applying *Straszewski* [2015] EWCA Civ 1245.
10. Mr Walker made a global submission to cover all four of the grounds. He drew my attention to [21] of the First-tier Tribunal decision in which the judge had stated that he had considered all the evidence, contended all matters were at the front of the judge's mind and submitted that counsel for the appellant was, therefore, wrong to say that the evidence was not considered.
11. At the end of the hearing, I informed the representatives that I was satisfied that all four grounds were made out, that the decision of the First-tier Tribunal contained material errors of law and was set aside with no findings preserved.

#### Decision on error of law

12. I can take grounds one and two together. The judge rightly considered Regulation 27(5)(b) which states that 'the decision must be based exclusively on the personal conduct of the person concerned; ' but misdirected himself by concluding that he was not permitted to consider any other factor other than the personal conduct of the appellant in deciding whether the deportation order would still be justified. As *Straszewski* states at {14}, 'matters that do not directly relate to the particular case or which relate to considerations of general prevention do not justify a decision to remove (an EEA national).'
13. At [27] the judge said as follows.

Regulation 27(5) (b) is particularly important. The decision (on deportation) 'must be based exclusively on the personal conduct of the person concerned'. This excludes an assessment of the impact on the health of the appellant's children as a factor in the deportation decision.
14. The judge was wrong to believe that he was required to exclude from his consideration the evidence which was before him relating to the appellant's family links. That evidence was contained in a not inconsiderable appellant's bundle which included letters from the appellant's children, an expert report regarding the psychological state of one of the children and medical reports. Not only did the judge misdirect himself, he gave no reasons for his stance and he relied on that misdirection in failing to assess the evidence provided by the appellant.
15. It is not enough for the judge to include a catch-all paragraph saying that the evidence has been considered and make no further reference to it. The evidence provided by the appellant was deserving of proper consideration, primarily in

relation to the impact on the mental health of his children of his continued exclusion from the United Kingdom.

16. The judge's proportionality assessment which appears in its entirety at [48] further demonstrates how little of the appellant's evidence was taken into account by the judge.

The appellant has very limited ties to the UK. The appellant's family have lived in Germany for a significant period. Clearly the appellant's wife and children would prefer to live in the UK but there is no reason why they could not live in Germany. Their preferences do not outweigh the risk posed by the appellant and set out above.

17. Furthermore at [28], the judge finds that a further reason for not needing to consider the wider considerations set out in regulation 27(6) is because the appellant is outside the United Kingdom. That finding is unexplained and takes no account of the requirement in the Regulations to determine whether there has been 'a material change in circumstances that justified the making of the order.'
18. I particularly note that at [20] the judge set out the four issues to be determined which were identified by the parties, which included whether the decision to maintain deportation is in accordance with the principles of Regulation 27 (5) and (8) and whether it was proportionate. The judge further notes that he is required to decide whether the decision to maintain deportation is in the best interests of the appellant's children. This is the only mention of best interests in the judge's decision.
19. Given my foregoing findings, I conclude that the judge failed to correctly apply the Regulations and failed to take account of material matters.
20. I will address the third ground briefly. At [25] and [29], in considering whether there had been a material change in circumstances, the judge relies extensively on extracts from the Home Office policy document 'Public policy, public security or public health decisions,' Version 6.0 November 2021. The judge erred in treating this policy as an aid to interpretation of the 2016 Regulations, applying *Mahad* [2010] 1 WLR 48. Furthermore, this policy was not relied upon by the respondent at the hearing. Ultimately, the judge decided that there had been a material change in circumstances and therefore, this error would not, by itself, be sufficiently material to justify a setting aside of the judge's decision.
21. Lastly, in relation the fourth ground, the judge at [47] states that 'The public should know that those who are convicted of crimes serve the sentence passed by a Court.' This is a clear indication that the judge erred in having regard to matters of public perception. On this point, at {14} of *Straszewski* at the following is said.

On the face of it, therefore, deterrence, in the sense of measures designed to deter others from committing similar offences, has of itself no part to play in a decision to remove the individual offender. Similarly, it is difficult to see how a desire to reflect public revulsion at the particular offence can properly have any part to play, save, perhaps, in exceptionally serious cases.

22. The respondent has not argued that the appellant's case falls within the category of exceptionally serious cases where the issue of public revulsion would have a part to play. It follows that the judge materially erred by having regard to immaterial matters in determining this appeal.

23. I canvassed the views of the parties as to the venue of any remaking and both were of the view that the matter ought to be remitted if there were no preserved findings of fact. Applying *AEB* [2022] EWCA Civ 1512 and *Begum* (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC), I carefully considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the Senior President's Practice Statements. I took into consideration the history of this case, the nature and extent of the findings to be made as well as the fact that the nature of the errors of law in this case meant that the appellant was deprived of an adequate consideration of his appeal. I further consider that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process and therefore remit the appeal to the First-tier Tribunal.

### **Decision**

**The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.**

**The decision of the First-tier Tribunal is set aside.**

**The appeal is remitted, de novo, to the First-tier Tribunal at Manchester to be reheard by any judge except First-tier Tribunal Judge PG Lewis.**

T Kamara

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**4 August 2023**