



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

Case No: UI-2023-003660

First-tier Tribunal No: HU/54412/2022  
EA/06587/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

**On 19<sup>th</sup> of March 2024**

**Before**

**UPPER TRIBUNAL JUDGE LANE**  
**DEPUTY UPPER TRIBUNAL JUDGE WELSH**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**IBRAHIM CABDULGADIR**  
**(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms Turnbull of Counsel, instructed by Turpin Miller Solicitors  
For the Respondent: Mr Terrell, Senior Home Office Presenting Officer

**Heard at Field House on 5 January 2024**

**DECISION AND REASONS**

**Introduction**

1. We refer to the parties as they were in the First-tier Tribunal, with Mr Cabdulgadir as the Appellant and the Secretary of State as the Respondent.
2. This is an appeal against a decision of First-tier Tribunal Judge L K Gibbs (“the Judge”), promulgated on 22 May 2023. By that decision, the Judge allowed the Appellant’s appeal on the ground that his deportation was not in accordance with regulation 23 of the European Economic Area Regulations 2016 (“the 2016 Regulations”).
3. His claim arose out of the making of a deportation order following his being convicted, on 15 November 2019, of two offences - possession of a firearm and

possession of ammunition - for which he was sentenced to a total term of imprisonment of 6 ½ years.

4. No anonymity order was made previously and there is no need for one now.

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

5. Insofar as is relevant to the matters we are considering, by the date of the appeal hearing the issues in dispute between the parties included whether the Appellant was a person with a right of permanent residence within the meaning of regulation 15 of the 2016 Regulations and whether the Respondent had demonstrated that the personal conduct of the Appellant represented a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society (regulation 27(5)(c) of the 2016 Regulations).
6. The Judge determined both these matters in the Appellant's favour and therefore allowed the appeal. In relation to her assessment of regulation 27(5)(c), the Judge stated:

There can be no dispute that the Appellant's previous offending is serious. The length of his most recent sentence is, I find, indicative of that and the Appellant has been assessed as a medium risk of reoffending. I find that Schedule 1 of the EEA Regs 2016 sets out that the longer the sentence and the more convictions that an individual has the greater the likelihood that his continued presence in the UK represents a genuine, present and sufficiently serious threat affecting the fundamental interests of society. [25]

7. However, the Judge then identified those factors which led her to conclude that the Respondent had not discharged the burden. In summary, those factors are:
  - (1) He had not engaged in any reprehensible behaviour, whether in the form of criminal offending or otherwise, since being released on licence [26].
  - (2) He no longer lived in the geographical area linked to his previous criminal activity [26].
  - (3) His evidence that he had turned his life around had been unchallenged by the Respondent [26].
  - (4) He had matured since the commission of the most recent offence [27].
  - (5) The Judge gave significant weight to the Appellant's relationship with his wife who she considered to be "a stabilising factor in his life" and who was a woman who the Judge found had no association with the Appellant's previous criminal lifestyle [28].
  - (6) The Appellant's desire to maintain good relations with his mother and wider family was a source of motivation for him to avoid further offending [30].

### **The grounds of appeal and grant of permission**

8. There is a single ground of appeal, namely that the Judge failed to give adequate reasons for finding the Appellant does not pose a genuine, present and sufficiently serious threat to the fundamental interests of society, the particulars of the ground being that the Judge failed "to have adequate regard to the OASys report" and "goes behind the findings of the Appellant's probation officer who

finds that the Appellant poses a medium risk of reoffending and a medium risk of harm”.

9. Permission to appeal was granted by Upper Tribunal Judge Pitt.

### **The Upper Tribunal hearing**

10. Mr Terrell relied on the grounds of appeal and Ms Turnbull on the Appellant’s skeleton argument. Both advocates made very helpful supplementary oral submissions. During the course of this decision, we address the points they made.

### **Discussion and conclusions**

11. Mr Terrell submitted that the OASys assessment was an important piece of evidence to which the Judge did not have sufficient regard. The assessment contained within it evidence to which the Judge made no reference, for example, details of the Appellant’s full criminal history, reference to him having gang associations, him targeting vulnerable victims and, in particular, the statistical analysis of risk. Further, the Judge did not explain, in light of the contents of the OASys report, why she placed so much weight on the Appellant’s lack of offending since his release on licence.
12. Ms Turnbull submitted that there was no need for the Judge to quote the various parts of the OASys report. The Judge took into account both the probation officer’s assessment of risk and the nature/seriousness of the Appellant’s previous offending. The Judge heard the oral evidence of the Appellant (the evidence of the Appellant’s wife and mother not being subject to any cross-examination) and was entitled to form her view about the credibility and reliability of the evidence. Consequently, and absent any assertion that the Judge’s conclusion was perverse, there was no basis to interfere with her conclusion.
13. We are only permitted to interfere with the Judge’s decision if the Judge made a mistake on a point of law and, for the reasons set out below, we conclude there was no such error.
14. At [25] the Judge took into account, as factors supportive of the Respondent’s case (and adverse to the Appellant’s case), the probation service’s risk assessment and the Appellant’s criminal history. All the factors identified in the grounds of appeal, and referred to by Mr Terrell in his oral submissions, were matters taken into account by the probation service when calculating the risk of reoffending and risk of harm by reason of the commission of further offences. It would only have been necessary for the Judge to address the specific matters relied upon by the probation service in reaching their conclusion if the Judge disagreed with either the relevance or probative value of any of those matters. The Judge did not disagree and therefore there was no reason for her to rehearse the contents of the probation assessment.
15. Having set out those factors that supported the Respondent’s case, the Judge then set out at [26-29] those factors which supported the Appellant’s case. It is not suggested that any of those factors were irrelevant considerations nor, we

note, is it suggested that the conclusion reached by the Judge was one which no reasonable Judge could have reached. The complaint is framed as one of inadequate reasons. However, the Judge clearly explained how much weight she attached to each factor and her reasons for doing so. The only specific criticism identified by Mr Terrell was that the Judge did not explain why she attached significant weight to the lack of offending since the Appellant's release on licence. Despite the eloquence of Mr Terrell's advocacy, we cannot agree with him. At [26] the Judge did precisely this: she assigned significant weight to this factor taking into account the length of time he had been on licence, that he was now living as part of the community, that he was living away from the area associated with his previous offending and she accepted his account that he made the decision to turn his life around. In other words, his lack of further offending was consistent with the view she had formed about the credibility of his account to have turned his life around and the practical measures he had taken to remove himself from the circumstances associated with his previous offending. We are unclear as to what else the Judge could have said to explain herself.

16. It may well be that the decision of a Judge could be characterised as generous to the Appellant and that another Judge would have reached a different conclusion in light of the Appellant's criminal history but, in our judgment, the decision is not tainted by any error of law.

### **Notice of Decision**

17. The decision of the First-tier Tribunal did not involve the making of a material error on a point of law and the decision to allow the appeal stands.

**C E Welsh**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**28 February 2024**