**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: DA/01946/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**
**On 11 July 2014**
**Oral determination given following hearing**

**Determination Promulgated**
**On 11 August 2014**

**Before**

**UPPER TRIBUNAL JUDGE CRAIG**

**Between**

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

Appellant

**and**

**MR ALBERTO BRAGANCA CASSAMA**

Respondent

**Representation:**

For the Appellant (Secretary of State): Mr T Wilding, Home Office Presenting Officer
For the Respondent (Mr Cassama): Ms C Robinson, Counsel instructed by Birnberg Peirce & Partners

**DETERMINATION AND REASONS**

1. This is an appeal brought by the Secretary of State against a decision of a panel of the First-tier Tribunal consisting of First-tier Tribunal Judge Petherbridge and Mrs S A Hussain JP, non-legal member. This determination was promulgated on 27 March 2014 following a hearing at Taylor House on 19 March 2014. For ease of reference I

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shall refer to the Secretary of State, who was the original respondent, as "the Secretary of State" and to Mr Cassama, who was the original appellant, as "the claimant".

2. This appeal was last before me on 16 May 2014 when I found that the determination of the panel had contained an error of law such that the decision had to be set aside and remade by this Tribunal.

3. I set out my reasons within the decision which I gave immediately following that hearing and it is necessary for the purposes of this determination to repeat much of what was contained within that decision which I shall now do.

4. The claimant is a citizen of Portugal and of the European Union who was born on 28 July 1989. He arrived in this country in June 2012 but in or about March 2013 he was arrested and subsequently charged with conspiracy to supply a class A drug (said to be cocaine) and conspiracy to supply a class B drug, cannabis. He pleaded guilty to these offences and was sentenced to concurrent sentences of imprisonment amounting to twelve months' imprisonment.

5. I should state because this is clear from the sentencing remarks of the judge who sentenced the claimant that the charge of conspiracy to supply a class A drug should have been amended because his plea was accepted (and he was sentenced) on the basis that the substance which he had supplied to the undercover policeman who subsequently arrested him was not in fact cocaine but was a combination of paracetamol and caffeine. It was accepted that the claimant and his co-conspirator at all times knew this and so effectively what they were engaged upon was a fraud upon potential customers who wished to purchase cocaine because they would be taking money from these people but supplying a relatively harmless product.

6. Following his conviction the Secretary of State considered, having regard to Regulation 21(5)(d) of the Immigration (European Economic Area) Regulations 2006, that the personal conduct of the claimant represented a genuine, present and sufficiently serious threat such as to justify his deportation and accordingly decided under Regulation 19(3)(b) that he should be removed. An order was thereafter made in accordance with Regulation 24(3) requiring him to leave the United Kingdom and prohibiting him from re-entering while the order was in force.

7. The Secretary of State's decision, which was made after she had written to the claimant notifying him that she was considering his deportation and seeking reasons why he should not be deported following his conviction, was set out in a letter dated 7 October 2013 following the representations which the claimant had made.

8. The claimant appealed against this decision and his appeal was heard by the panel, whose composition was as noted above, on 19 March 2014, and in a determination promulgated on 27 March 2014 the panel allowed the claimant's appeal both under the Immigration (European Economic Area) Regulations 2006 and also on human rights grounds Article 8.

9. As already noted above the Secretary of State appealed against this decision and permission to appeal was granted by Designated First-tier Tribunal Judge Dearden on 16 April 2014. The basis upon which the appeal was made was set out in the Secretary of State's grounds and was essentially that the panel considered that it was a relevant factor that the claimant's prospects of rehabilitation were high.

10. It was argued in the grounds that this was contrary to the decision of the European Court of Justice in *Tsakouridis* [2011] CMLR 11 where the Court of Justice had found that the term "genuinely integrated" was appropriate to describe those for whom the prospects of rehabilitation were a relevant issue, but that European nationals could not properly be said to be integrated until they had acquired a right of permanent residence in another member state in the European Union, which it was accepted that this claimant had not (he had not even been here for two years, seven months of which he had spent in prison).

11. At the earlier hearing the Secretary of State relied on the reported presidential decision of this Tribunal in *Essa* (EEA: rehabilitation/integration) [2013] UKUT 00316 in which at paragraph 26 the Tribunal had found as follows:

> "26. We agree that the court's reference (that is in *Tsakouridis*) to genuine integration must be directed at qualified persons and other family members who have resided in the host state as such for five years or more. People who have just arrived in the host state, have not yet become qualified persons, or who have not been a qualified person for five years, can always be removed [for] non-exercise of free movement rights irrespective of public good grounds to curtail free movement rights. If their presence during this time makes them a present threat to public policy it would be inconsistent with the purposes of the Directive to weigh in the balance against deportation their future prospects of rehabilitation."

12. As I set out in my previous decision, although it was apparent from the panel's determination which had taken a generally positive view of the claimant, Mr Wilding (representing the Secretary of State at this hearing as well as the present) nonetheless submitted that the panel had not considered this appeal properly in the context of the Regulations. So where for example at paragraph 68 of its determination the panel stated that "the Tribunal took the view that the appellant did not present a threat to public policy" it went on to say as follows:

> "… and there were factors relevant to integration that suggested that there were reasonable prospects of his rehabilitation. That being so that factor has to be taken into account in the proportionality balance as to whether a deportation order would not be justified."

13. Mr Wilding's submission effectively was of the use of the term "public policy" in this context which had implicit within it the concept of immigration and rehabilitation, which was not appropriate in the case of a person who had not acquired permanent residence. He referred also to other passages within the determination in order to support his argument that the first part of the sentence in paragraph 68 could not be considered in isolation.

14. Having considered the arguments advanced on behalf of both parties (and as I noted in my earlier decision with some regret) I decided that Mr Wilding's submissions had sufficient force that the determination of the panel had to be set aside.

15. I considered that in the first place the bold statement that "the Tribunal took the view that the appellant would not present a threat to public policy" was on its face clearly unjustifiable. On any view he presented a threat of some sort; he had been convicted of a serious offence, and even though the assessment of the Probation Service in the NOMS 1 assessment was that he "posed a low risk upon members of the public" a low risk is still a risk.

16. Moreover and more importantly perhaps in the context of this case, at paragraph 69 the panel had stated as follows:

> "69. The Tribunal took the view that the appellant would not constitute a present threat **when rehabilitated** [my emphasis] and that his rehabilitation was well-advanced and there is a substantial degree of integration to a point where we consider it would be disproportionate for the respondent to proceed to deport the appellant."

17. I decided that to take the view that he would not **then** [my emphasis] be a "present threat" when rehabilitated did not make sense because it was using the term "present threat" to describe what the position would be in the future, whereas the issue before the panel was whether or not at the time of the decision he constituted a "present threat". The question the panel should have asked itself was whether having considered all the evidence and made findings regarding this evidence this claimant represented "a genuine, present and **sufficiently serious** [again my emphasis] threat affecting one of the fundamental interests of society" (as set out in Regulation 21(5)(c) of the EEA Regulations).

18. If the panel's finding was that he did not, then his removal could not be justified under the Regulations. It was only if he did represent a "genuine, present and sufficiently serious threat affecting one of the fundamental interests of society" that his removal could be justified.

19. Although I considered that had the panel asked itself the right question it might very well still have allowed this claimant's appeal, I nonetheless found that by reason of its failure to ask itself the correct question the panel's decision was not properly reasoned, and that accordingly the decision would have to be remade.

20. Because it was not possible for the decision to be remade at the previous hearing without this Tribunal hearing further evidence (which could not be done on that occasion) I was obliged to adjourn the hearing until today's date. I made it clear in my decision that the issue which would have to be considered by this Tribunal was whether or not the personal conduct of this claimant now represented a "genuine, present and sufficiently serious threat affecting one of the fundamental interests of society" such that his removal would be justified.

21. I gave various directions for the rehearing which I shall discuss briefly in a moment.

**The Hearing**

22. One of the important directions which I gave was that:

> "The claimant will prepare and file with the Tribunal and serve on the Secretary of State by no later than Monday 30 June a paginated bundle containing all the documents relevant to this appeal"

and that "this bundle must contain in respect of every witness it is intended shall give evidence a witness statement capable of standing as evidence-in-chief."

23. I also recorded that the Tribunal would take account of the findings made by the panel at paragraphs 66, 67, 71 and 72 of the determination.

24. I set out these paragraphs now:

> "66. We had the opportunity of seeing the appellant and his partner both give evidence and we were impressed by their genuineness and honesty and their genuine desire to live their lives together supported by other members of their respective families who had attended the Tribunal to give evidence in support of the appellant and his appeal.
>
> 67. These members of the family included his mother, younger brother and his partner. We were also referred to a letter from the appellant's employment coach, Mr Richard Learthart of 12 March 2014 who confirmed that the appellant had been meeting him every few weeks to search for jobs and further his career. In that letter, Mr Learthart says of the appellant that '[he] is always a pleasure to meet with, and is pro-active and keen to get into full-time sustainable employment'. That was very much the impression that we were left with on hearing the oral evidence of the appellant and other members of his family.
>
> …
>
> 71. We accept that the appellant now very much regrets his criminal offending and we found his remorse genuine in that regard particularly with regard to the impact that had had on his mother, sister and younger brother.
>
> 72. We accept that the appellant is now in the throes of changing his life. He has settled into a state of some domesticity with his new partner and her 2 year old son."

25. Regrettably, notwithstanding the direction that the claimant should prepare and file with the Tribunal and serve on the Secretary of State by no longer than Monday 13 June the paginated bundle referred to in the directions (in the knowledge that the resumed hearing would be listed before me today) this direction was not complied with, and it was not until 9 July, some two days ago, that this bundle was served. At the end of this bundle was a skeleton argument which had been prepared by Ms

Robinson, Counsel, who is again representing the claimant. The effect of this was that I did not receive this bundle (including the skeleton argument) until about five minutes before the hearing and consequently about 40 minutes of time was wasted this morning because it was necessary for me to read and consider this bundle whereas had it been served properly in time the hearing could have commenced at 10.00am as it should.

26. This does not appear to have been the fault in any way of Ms Robinson, and I was told that it was as a result of funding difficulties because the claimant is not legally aided and out of what are no doubt very limited resources has had to pay for his own representation. However, I do not regard this as a proper justification for the directions not being properly complied with.

27. It makes it very difficult for this Tribunal to prepare properly for appeals if directions which are given with the aim of the swift and efficient despatch of the Tribunal's business are not properly complied with. The claimant's solicitors are very experienced and know how important it is that directions are complied with and at the very least if there was a problem this Tribunal should have been notified earlier, which it was not.

28. It is also the case of course that the bundle was not served on the Secretary of State either until very late but fortunately Mr Wilding with his typical efficiency was able to prepare the case fully and properly notwithstanding the delay in serving the file upon him, and did not seek to take any point with regard to late service.

29. At the hearing before me I heard evidence from the claimant, his partner Ms Loforte, and the claimant's mother Ms Braganca. In respect of the claimant and his partner they gave evidence mainly in English but from time to time where necessary they were assisted by an interpreter who translated the proceedings to them in Portuguese and translated their answers back to the Tribunal, both these witnesses having told the Tribunal that they and the interpreter understood each other.

30. In respect of the claimant's mother, the third witness, she gave evidence entirely in Portuguese with the assistance of the interpreter, as she understood very little English. I was also assisted by a statement made on behalf of the claimant by his brother Helder. He was unable to give oral evidence before me at the hearing today because he was as I understood in the middle of GCSEs and so could not be present.

31. I also heard submissions which were made on behalf of both parties and was greatly assisted also by the skeleton argument which had been prepared on behalf of the claimant by Ms Robinson and given to her solicitors last Tuesday (three days ago) but which as I have noted above I did not see until five minutes before the hearing. It is a pity I did not see this document earlier but even though it was late I have found it extremely helpful and I should record also that I was greatly assisted in the consideration of this appeal by the very high quality of the submissions made to me on behalf of both parties.

32. I recorded the evidence of the witnesses (who were all cross-examined) and the submissions contemporaneously and as my notes are contained within the Record of Proceedings I shall not set out below everything which was said to me either by the witnesses or the respective representatives, but shall refer only to such of the evidence and the submissions as is necessary for the purposes of this determination. I have, however, had regard to everything which was said to me during the course of the hearing as well as to all the documents contained within the file whether or not the same is specifically set out and recorded below.

33. As I have set out above the main issue in this appeal is whether or not the personal conduct of this claimant now represents a "genuine, present and sufficiently serious threat affecting one of the fundamental interests of society" such that his removal would be justified. It is helpful if I set out briefly the legal parameters within which the decision must be made.

34. The claimant being a European national who is exercising treaty rights in this country his position is governed by Directive 2004/38/EC as consolidated within the Immigration (European Economic Area) Regulations 2006 as amended. The purpose of the Directive is to ensure as a general principle the free movement of citizens of the European Community within the area of the Community and at Chapter VI there is provision with regard to "restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health". The Directive sets out the general principles contained within Article 27 of the treaty as follows:

> "1. Subject to the provisions of this Chapter, member states may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends.
>
> 2. Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.
>
> The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.
>
> …"

35. The Directive then deals with Article 28 "protection against expulsion" as follows:

> "1. Before taking an expulsion decision on grounds of public policy or public security, the host member state shall take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host member state and the extent of his/her links with the country of origin.

2. The host member state may not take an expulsion decision against Union citizens or their family members, irrespective of nationality, who have the right of permanent residence on its territory, except on serious grounds of public policy or public security…"

36. With regard to 2. above, it is accepted on behalf of the claimant that he has not acquired the right of permanent residence and so this provision does not apply.

37. The relevant provisions of the Immigration (European Economic Area) Regulations 2006 are as follows.

"**Exclusion and removal from the United Kingdom**

19.(1) A person is not entitled to be admitted to the United Kingdom by virtue of Regulation 11 if his exclusion is justified on grounds of public policy, public security or public health in accordance with Regulation 21.

…

(3) Subject to paragraphs (4) and (5), an EEA national who has entered the United Kingdom or the family member of such a national who has entered the United Kingdom may be removed if -

…

(b) the Secretary of State has decided that the person's removal is justified on grounds of public policy, public security or public health in accordance with Regulation 21.

…

**Decisions taken on public policy, public security and public health grounds**

21 (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 permanent right of residence under Regulation 15 except on serious grounds of public policy or public security. [As already noted above this sub-section does not apply in respect of this claimant, who has not acquired a permanent right of residence].

…

(5) Where a relevant decision is taken on grounds of public policy or public security it shall, in addition to complying with the preceding paragraphs of this Regulation, 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 concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society;

(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.

(6) Before taking a relevant decision on the grounds of public policy or public security in relation to a person 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 the person, the person's length of residence in the United Kingdom, the person's social and cultural integration into the United Kingdom and the extent of the person's links with his country of origin…"

38. It is not a matter of dispute between the parties that although the courts have made it clear that in the case of a non-EU national the deportation of a "foreign criminal" who has been convicted of an offence for which he has been sentenced to a period of imprisonment of more than twelve months is by the will of Parliament deemed to be conducive to the public good and in the public interest these provisions do not apply to the same extent with regard to an EU national. This is because the Regulations as consolidated within the 2006 EEA Regulations make it clear that a decision-maker cannot take into account the deterrent effect of such a sentence on others or indeed give expression to the revulsion felt by members of the public towards people who commit serious criminal offences.

39. So while it would be right to say that there is a wider public interest to which the courts must give effect with regard to non-EU nationals who commit serious criminal offences which includes deterrence and the revulsion felt towards serious criminality by the public generally, these are factors which cannot be taken into account when dealing with an EU national. Were this claimant not an EU national, in light of current jurisprudence this Tribunal would be unlikely to find that the reasons why he should not be deported are sufficiently compelling as would justify it in finding, exceptionally, that he should not be deported. However, that is not the test that I have to consider in this case. As I have already stated the only issue, as set out in Regulation 21(5)(c) of the 2006 EEA Regulations, is whether he represents "a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society".

40. I do not intend to set out the evidence of the witnesses in full. I should, however, state that I was very impressed in particular with the evidence of the claimant's partner, who clearly does not attempt to play down the seriousness of the offence of

which the claimant was convicted and understands that this sort of offending cannot be either condoned or tolerated in this or any other civilised country.

41. I was also impressed notwithstanding the arguments to which I will refer briefly below regarding the breaches of the strict terms of the claimant's bail conditions with the claimant's sincerity with regard to his determination not to offend again in the future. In this regard I should set out the most up-to-date report from the Surrey and Sussex Probation Trust dated 17 March 2014 which was after the claimant had completed a supervision licence period and which provides as follows:

> "Further to my letter of 12 March 2014 concerning [the claimant]. I can confirm that [the claimant] successfully completed his supervision licence period attended on 13 March 2014. During this period he was not recalled to prison nor was he charged with any further offences.
>
> At completion of his supervision period using the SSPT probation assessment tools [the claimant] is assessed as low risk of reoffending and low risk of serious harm.
>
> During the period of supervision [the claimant] has successfully undertaken offence-focused work and work to address his criminogenic needs. In undertaking such work [the claimant] has been able [to] identify areas of his life he would like to improve and put in place plans to achieve those goals."

42. Having heard the evidence given by the witnesses, even had the findings of the First-tier Tribunal panel not been retained I would independently have made similar findings as that panel made. That is to say, I would have found and do find that the claimant and his partner were both genuine and honest in the desire they expressed to live their lives together supported by the members of their respective families and also that the claimant very much regrets his criminal offending now and that the remorse which he has expressed is genuine.

43. It is unfortunate that the evidence of the claimant's mother was inconsistent to at least some extent with the statement which she had prepared earlier because she told the Tribunal that she had not been informed before she had arrived in this country that the claimant had been arrested for the offences to which he later pleaded guilty and did not discover this until she came whereas in her statement she had said that she flew back to the UK when she found out that her son had been arrested "as he needed me on his side, and I needed to be with him too". It may be, as I think she tried to explain, that what she meant to say was that although she did not have specific knowledge that he had been arrested she knew that something was wrong because her son to whom she was very close had stopped telephoning her or it may be that her statement was an overenthusiastic attempt to assist her son. Whichever it is, this factor was not central in this case and does not impact on my judgment as to whether there is a real risk of this claimant reoffending.

44. What is potentially more serious and was relied upon by Mr Wilding was the fact that even though it was a condition of the claimant's bail that he resided at an address in Hastings which he had given previously to the Secretary of State, he did not strictly abide by the terms of his bail but firstly moved during the week for

substantial periods of time to live with his sister in Pimlico and secondly moved to an address in London without formally obtaining a change in his bail conditions.

45. It is argued on behalf of the Secretary of State that this shows that the claimant is still motivated by the desire to improve his economic wellbeing even if this involves him in lawbreaking (in this case by not abiding by his bail conditions) which was what had motivated him to commit the offences in the first place.

46. Mr Wilding also has commented on the failure of the claimant's sister to provide a witness statement on his behalf because clearly her evidence could have been relevant to the precise circumstances in which the bail conditions were not kept. He even went as far as to suggest to the claimant in cross-examination (as he was entitled to do because the purpose of cross-examination is to test the evidence of the witnesses) that this may have been because the claimant's sister no longer wished to have anything to do with him because she could not put up with the way in which he was behaving.

47. With regard to the latter argument, that is regarding the sister, I do take into account that it may have been preferable for a statement to be prepared but it is also clear that this case has not been prepared with the thoroughness and attention to detail that I would normally expect from the solicitors who have been representing the claimant. Clearly there was a funding issue, and as I have already noted, had this case been prepared entirely as it ought the directions which I had given previously would have been complied with.

48. It is also the case that there were in any event potentially four witnesses who were going to give evidence on behalf of the claimant and although, as it turned out, the breach of the bail conditions was a relevant or potentially relevant factor this may not have been immediately apparent. Also, as I shall briefly discuss below, the claimant's solicitors had received some instructions to attempt to regularise his position.

49. My finding with regard to the issue of the breach of bail conditions is that although the claimant should have ensured that the position was regularised properly I do not regard this as more than a marginal (albeit slightly more than technical) breach. It was clear following investigation (which included Ms Robinson obtaining up-to-date instructions from her instructing solicitors) that the issue of whether or not the claimant would remain in Hastings or move to London had been canvassed to the extent that the solicitors had been instructed to advise as to how bail conditions could be changed. It is also the case that at some stage before he moved to London the claimant told the Home Office that he was intending to do so and asked what documents would be required.

50. This not a case where the Secretary of State discovered that the claimant had been in breach of bail conditions and then brought the matter before the court but was one where the claimant openly told the court what he had done and explained why he had done it, and indeed there is also an application before me today to vary the terms

of the bail to regularise his position, albeit that this application should have been made at a much earlier time. The reason advanced by the claimant in evidence (during which he accepted that he knew that he was at the very least in technical breach of the terms of his bail) was that he could not get any work in Hastings and needed to move to London to get work and did not wish to continue to be a drain on public funds.

51. The position now is that he earns about £1,200 to £1,300 a month net and his partner, who has a son aged about 2, earns about £700 a month working part-time. So between them the couple earn about £2,000 a month and are able also between them to look after Nathan, Ms Loforte's young son.

52. During the course of their evidence I was told, in particular by Ms Loforte, how much worse the lives of this couple would be were they to move back to Portugal and I have noted this evidence, because there is a proportionality exercise which would have to be carried out, were I to be of the view that the threat of this claimant reoffending is a sufficiently serious threat as would absent other factors justify his expulsion.

53. Having considered all the factors very carefully, including in particular the factors set out at Regulation 21(5) and (6) of the 2006 EEA Regulations, I am firmly of the view (considering the position today as I must and not at some future date when the claimant might become rehabilitated) that this claimant does not present "a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society". As I have already noted above, that is the only basis upon which his expulsion could be justified as this Tribunal or any decision-maker may not in the case of an EEA national take into account the deterrent effect that the expulsion of people who commit offences such as this claimant committed might have. I accept as did the panel below that this claimant's remorse is genuine.

54. I do not consider that the fact that there were what I have found to be marginal breaches of his bail conditions indicates that the claimant's remorse is not genuine. I do not regard these breaches as anywhere near as serious as dealing in drugs (or fraudulently pretending to deal in Class A drugs) and I do not accept the submission made on behalf of the Secretary of State that this shows that the claimant would do whatever he had to do to make money if he did not have any. It is one thing wanting to move to London in order to work and look after one's family without ensuring first that the paperwork has been properly completed as it ought but quite a different and far more serious matter engaging in real criminality in order to provide an income. The fact that he did the former is not in my judgment an indication that he would be inclined to do the latter. Although there was more than one offence committed, the time frame was small and this is the only period during which this claimant has ever been involved in criminality (of which the authorities are aware); I believe the claimant when he tells the Tribunal that he realises that the effect of crime is prison and absence from his family and that he means to do what he has to do (which is not to commit further offences) to ensure that he never goes back there.

55. I would just add this. The claimant has not been in this country very long and he will have to remain in this country exercising treaty rights for several more years before he will acquire a permanent right of residence and be considered to be integrated within British society; if he was to prove this Tribunal wrong by committing further offences it would be very hard for him to argue in the future that, having been given this chance, he did not then represent a sufficiently serious present threat affecting one of the fundamental interests of society such as to justify his removal.

56. Accordingly, the fact that this Tribunal makes the decision now that he does not represent such a sufficiently serious threat does not preclude another Tribunal finding in future in light of any further offending that the decision of this Tribunal was with the benefit of hindsight wrong. However, because I do not consider for the reasons I have given that this claimant now represents such a serious threat affecting one of the fundamental interests of society that his expulsion could be justified, it follows that his appeal against the original decision of the Secretary of State to deport him must be allowed and I shall so find.

## Decision

**I set aside the decision of the First-tier Tribunal as containing a material error of law and substitute the following decision:**

**The claimant's appeal against the decision of the Secretary of State to deport him is allowed.**

Signed:

Upper Tribunal Judge Craig 11 August 2014