Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00008/2018

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre
On 28 February 2019

Decision & Reasons Promulgated
On 20 March 2019

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

YAHAYA [I]

Respondent

Representation:
For the Appellant: Mr D Mills, Senior Home Office Presenting Officer
For the Respondent: Ms A Harvey, instructed by TMC Solicitors

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State, for convenience, I will refer to the parties as they appeared before the First-tier Tribunal.

Introduction

2. The appellant is a citizen of Sweden who was born on 8 June 1991. He came to the United Kingdom on 16 August 2000 with his parents and sisters when he was 9 years of age.

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3. Between January 2007 and November 2017, the appellant was convicted of 26 criminal offences. However, none of those resulted in any period of imprisonment until the most recent. On 31 August 2017 he was convicted at the Chester Crown Court of dangerous driving and was sentenced on 22 September 2017 to fifteen months' imprisonment and disqualified from driving until he passed the ordinary driving test. On 20 November 2017, he was also convicted at the Black Country Magistrates' Court of two offences of assaulting a police constable and was sentenced to 162 days' imprisonment.

4. On 13 December 2017, the Secretary of State made a deportation order against the appellant on the grounds of public policy under reg 23(6)(b) of the Immigration (EEA) Regulations 2016 (SI 2016/1052) ("the EEA Regulations 2016").

5. The appellant was released from his term of imprisonment on 27 December 2017 but remained in immigration detention until April 2018.

The Appeal

6. The appellant appealed to the First-tier Tribunal. In a determination promulgated on 19 March 2018, Judge R R Hopkins allowed the appellant's appeal under the EEA Regulations 2016 and also under Art 8 of the ECHR. Judge Hopkins found that the appellant did not represent a "sufficiently serious threat affecting one of the fundamental interests of society" and that his deportation was not proportionate.

7. The Secretary of State sought, and was granted, permission to appeal to the Upper Tribunal.

8. In response to the grant of permission, the appellant filed a rule 24 response.

9. The appeal was initially listed before me on 6 November 2018. In a decision sent on 18 December 2018, I set aside Judge Hopkins' decision on the basis that he had materially erred in law in finding that the appellant did not represent "a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society". The appeal was adjourned in order that a resumed hearing before the Upper Tribunal could take place.

10. At the initial hearing, the Secretary of State's (then) representative (Mr Howells) conceded that the appellant had established that he had a 'permanent right of residence' in the UK from September 2009. He accepted that the appellant's deportation could, therefore, at a minimum only be justified if there were "serious grounds of public policy and public security" under reg 27(3). Mr Howells also accepted that at the resumed hearing the appellant could argue that he was entitled to the highest level of protection against deportation under reg 27(4) based upon a "continuous period of at least ten years' residence" prior to the Secretary of State's decision to deport him, so that he could only be removed on "imperative grounds of public security".

The Resumed Hearing

11. The resumed hearing took place before me on 28 February 2019. The appellant was represented by Ms Harvey, and the Secretary of State was represented by Mr Mills, a Senior Home Office Presenting Officer.

12. At the hearing, I heard oral evidence from the appellant and from his mother, [HY]. In addition to the bundle of documents originally submitted at the First-tier Tribunal's hearing, the appellant also relied upon a supplementary bundle of documents, originally filed at the time of the initial hearing before me, and I admitted that material under rule 15(5A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended) without objection from the Secretary of State.

13. As a result of both representatives' submissions, the principal issues in the appeal were clearly identified.

14. Mr Mills accepted that the findings of the First-tier Tribunal, which had been upheld in my earlier decision, stood. He accepted that the appellant had a permanent right of residence and that, on that basis alone, the appellant could only be deported on "serious grounds" of public policy or public security.

15. Mr Mills also accepted, the First-tier Tribunal's finding, which I had also upheld, that the appellant was at the time of his imprisonment integrated in the UK.

16. Mr Mills accepted that the appellant was, given that he had been resident in the UK since August 2000, entitled to argue that he could establish a "continuous period of at least ten years' residence" prior to the Secretary of State's decision to deport him taken on 13 December 2017 and that, accordingly, he could argue that he could only be removed on "imperative grounds of public security".

17. Mr Mills indicated that he was not in a position, without express instructions, to concede that the appellant could only be removed on "imperative grounds of public security". He accepted, however, that if the appellant could rely on that ground, his offending did not reach that high threshold of "imperative grounds of public security" and his appeal should be allowed.

18. In respect of whether the appellant could rely upon that ground, Mr Mills referred me to the Grand Chamber's decision in B v Land Baden-Wurttemberg; SSHD v Vomero (Cases C-316/16 and C-424/16) [2018] Imm AR 1145 ("B and Vomero") at [65] *et seq* and reg 3(4) of the EEA Regulations 2016. He accepted that reg 3(4) was consistent with the CJEU's approach in B and Vomero.

19. Mr Mills indicated that the issue of whether the appellant's imprisonment between 22 September 2017 and 27 December 2017 (the exact period is 3-4 months see para 55 below) broke the appellant's "continuous residence" turned upon an assessment of the strength of his integration prior to imprisonment, the period of imprisonment, his rehabilitation and behaviour during his detention, and his continued integration after release from prison. Mr Mills accepted there was nothing in the evidence to

show that the appellant had done anything wrong during his imprisonment and that Judge Hopkins had accepted at para [51] of his determination that he was a changed person. Whilst Mr Mills was not in a position to concede that the appellant had established the necessary ten years' continuous residence, he indicated in his submissions that I was likely to find that, on the basis of all the factors I have set out and to which he referred me.

20. In her submissions, Ms Harvey relied in particular upon the appellant's oral evidence and that of his mother, together with supportive evidence from the appellant's ex-partner dated 11 February 2019 in support of his continued contact with his two children, both British citizens, aged almost 5 (his daughter) and 2 years old (his son).

21. Ms Harvey also relied upon the appellant's evidence which, she submitted, demonstrated he was more reflective about his offending and the short period of imprisonment between 22 September 2017 and 27 December 2017 did not, she submitted, demonstrate that he had ceased to be integrated in the UK and consequently he could establish the required ten years' continuous residence and could only, therefore, be deported on grounds of imperative public security.

The Law

22. The relevant law, set out in the EEA Regulations 2016 and decisions of the CJEU, was not a matter of dispute between the parties.

23. The appellant is an EEA national and his deportation must, therefore, comply with EU law as set out in reg 27 of the EEA Regulations 2016. That provide, so far as relevant, 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 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 resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision; or
>
> (b) ….
>
> (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 been taken in accordance with the following principles –

(a) the decision must comply with the principle of proportionality;

(b) the decision must be based exclusively yon 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 imminent;

(d) matters isolated from the particulars of the case or which relate to considerations and 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.

(7) ….

(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.)."

24. Regulation 27(8) cross refers to Schedule 1 to the EEA Regulations 2016 which sets out a number of considerations which, in particular, a court or Tribunal must "have regard to" in considering the issues of public policy, public security and the fundamental interests of society. Schedule 1 provides as follows:

"**Regulation 27**

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 of 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 present 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 interest of society;

   (c) the EEA national or family members 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 the 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 include –

   (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;

   (b) maintaining public order;

   (c) preventing social harm;

   (d) preventing the evasion of taxes and duties;

(e) protecting public services;

(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 relating to the misuses of drugs or crime with a cross-border dimensions as mentioned in Article 83(1) of the Treaty on the Functioning of the European Union);

(h) combating the effects of persistent offending (particularly in relation to offences, which if taken in isolation, may otherwise be unlikely to meet the requirements of regulation 27);

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

(j) protecting the public;

(k) acting in the best interests of a child (including where doing so entails refusing a child admission to the United Kingdom, or otherwise taking an EEA decision against a child);

(l) countering terrorism and extremism and protection shared values."

25. It may be helpful briefly to summarise the correct approach. It is for the Secretary of State to establish the justification for the deportation of an EEA national (or relevant 'family member') under the EEA Regulations 2016. There is a hierarchy of protections against expulsion or deportation which "increases in proportion to the degree of integration of the Union citizen in the host Member State" (B and Vomero at [48]).

26. First, deportation of an EEA national or 'family member' will only be justified on grounds of "public policy, public security or public health" in general.

27. Secondly, however when such an individual has a permanent right of residence there must be "serious grounds of public policy and public security" in order to justify any deportation.

28. Thirdly, in the case of an EEA national who has been continuously resident in the UK for at least ten years prior to the deportation decision, (and that is the relevant date from which to count back), deportation can only be justified on the most serious ground namely "imperative grounds of public security". In order to rely on this 'most serious ground' the individual must first establish that they have a permanent right of residence (see, B and Vomero at [49] and [61])

29. In establishing these grounds, the individual's conduct must represent a "genuine, present and sufficiently serious threat affecting one of the fundamental interests of society". That, in general, requires that it be established that the individual has a

propensity to reoffend in the future. However, in exceptionally serious cases, it may be that past conduct (which in general cannot alone establish a "present" threat) may suffice (see SSHD v Robinson (Jamaica) [2018] EWCA Civ 85 at [80] – [86] *per* Singh LJ).

30. Fourthly, in reaching any assessment, in particularly in relation to proportionality, all the relevant circumstances including the individual's age, state of health, family and economic situation, length of residence in the UK and social and cultural integration in the UK, rehabilitation prospects in both countries and any links with his or her own country, must be taken into account.

31. Fifthly, regard must be had to the considerations set out in Schedule 1 in the same way as in a non-EEA removal or deportation appeal the considerations in s.117B and s.117C respectively of the Nationality, Immigration and Asylum Act 2002 must be taken into account (on the latter see, Rhuppiah v SSHD [2018] UKSC 58 at [49]-[50]).

32. Sixthly, in determining whether an individual has resided in the UK for ten continuous years, regard should be had to any period of imprisonment prior to the decision to deport that individual (see B and Vomero). A period of imprisonment does not automatically break a period of residence such that it is no longer 'continuous' (B and Vomero at [71] and [80]). The issue is whether:

> "those periods of imprisonment have broken the integrative links previously forged with the host Member State with the result that the person concerned is no longer entitled to the enhanced protection provided for in [reg 27(4)(a)] – to carry out an overall assessment of the situation of that person at the precise time when the question of expulsion arises. In the context of that overall assessment, periods of imprisonment must be taken into consideration together with all the relevant factors in each individual case, including, as the case may be, the circumstances that the person concerned resided in the host Member State for the 10 years preceding his imprisonment…"

(see B and Vomero at [70]).

33. In relation to an EEA national who has satisfied the '10 years' continuous residence' requirement prior to the offending, the CJEU recognised in B and Vomero that it was particularly so that a period of imprisonment does not automatically break "the integrative links that that person has previously forged" and so result in a discontinuity of residence (at [71]).

34. In relation to the issue of when a period of imprisonment would result in a break in the 'integrative links' with the host Member State, the CJEU in B and Vomero said this (at [72]- [75]):

> "[72] As part of the overall assessment, mentioned in paragraph 70 above, which, in this case, is for the referring court to carry out, it is necessary to take into account, as regards the integrative links forged by B with the host Member State during the period of residence before his detention, the fact that, the more those integrative links with that state are solid – including from a social, cultural and family perspective, to the point where, for example, the person concerned is genuinely rooted in the society of that State, as found by the referring court in the main

proceedings – the lower the probability that a period of detention could have resulted in those links being broken and consequently, a discontinuity of the ten – year period of residence referred to in Article 28(3)(a) of the Directive 2004/38.

[73] Other relevant factors in that overall assessment may include, as observed by the Advocate General in point 123 to 125 of his Opinion, first, the nature of the offence that resulted in the period of imprisonment in question and the circumstances in which that offence was committed, and, secondly, all the relevant factors as regards the behaviour of the person concerned during the period of imprisonment.

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

[75] On that last point, it should also be born in mind that, as the Court has already pointed out, the social rehabilitation of the Union Citizen in the State in which he has become genuinely integrated is not only in his interests but also that of the European Union in general (judgment of 23 November 2010, *Tsakouridis,* C-145/09, EU: C: 2010: 08, paragraph 50)."

35. The CJEU reiterated the central issue in determining whether the most serious protection in reg 27(4) applied was whether, as a result of the period of imprisonment, it had been shown that the "integrative links" with the host Member State had been broken (see [82] and [83]). The 'holistic' assessment was reiterated in [83] of the CJEU's judgment:

> "…the condition of having 'resided in the host Member State for the previous ten years' laid down in that provision may be satisfied where an overall assessment of the person's situation, taking into account all the relevant aspects, leads to the conclusion that, notwithstanding that detention, the integrative links between the person concerned and the host Member State have not been broken. Those aspects include, inter alia, the strength of the integrative links forged with the host Member State before the detention of the person concerned, the nature of the offence that resulted in the period of detention imposed, the circumstances in which that offence was committed and the conduct of the person concerned throughout the period of detention."

36. It is essentially the application of that approach definitively set out by the CJEU in B and Vomero which is the focus of whether the appellant's imprisonment between 22 September 2017 and 27 December 2017 – a period of approximately three months (and see para 55 below) - had the effect of breaking the continuity of the period of his residence so as to prevent him establishing, dating back from the deportation decision taken on 13 December 2017, a period of ten years' continuous residence.

37. Regulation 3 of the EEA Regulations 2016 deals with the issue of "continuity of residence". Regulation 3(3)(a) sets out the 'default' position that continuity of residence "is broken" when "a person serves a sentence of imprisonment". The effect reflects the CJEU's position that a period of imprisonment breaks the continuity of residence for the purposes of established the required 5 years' residence in accordance with EU law in order to establish a permanent right of residence (see

Onuekwere v SSHD (Case C-378/12) [2014] Imm AR 551). However, reg 3(4) goes on, in effect, to 'disapply' that provision when considering reg 24(4), and whether the 10 years' residence requirement is met, in certain circumstances:

> "(4) Paragraph (3)(a) applies, in principle, to an EEA national who has resided in the United Kingdom for at least ten years, but it does not apply where the Secretary of State considers that—
>
> (a) prior to serving a sentence of imprisonment, the EEA national had forged integrating links with the United Kingdom;
>
> (b) the effect of the sentence of imprisonment was not such as to break those integrating links; and
>
> (c) taking into account an overall assessment of the EEA national's situation, it would not be appropriate to apply paragraph (3)(a) to the assessment of that EEA national's continuity of residence."

38. Although not expressed in precisely the terms of the CJEU in B and Vomero, the effect is likely to be indistinguishable. Mr Mills accepted that in this appeal. The search remains, adopting a 'holistic assessment', whether the integrative links with the UK have been broken by the period of imprisonment.

39. With that legal approach in mind, I turn now to the facts of this appeal.

Discussion and Findings

40. In reaching my findings, I have had regard to all the material before me, in particular the witness statements and documents contained in the appellant's bundle and supplementary bundle together with the oral evidence of the appellant and his mother. I apply the 'holistic' approach in B and Vomero and reg 3(4) of the EEA Regulations 2016.

41. The primary facts were not essentially in dispute. The appellant came to the UK on 16 August 2000 when he was 9 years old. He came to the UK with his parents (his father is a Swedish citizen) and his two sisters. He attended school in the UK.

42. Between January 2007 and November 2017, the appellant was convicted of 26 criminal offences. However, it was not until his conviction on 31 August 2017 for dangerous driving that he received a custodial sentence, namely fifteen months' imprisonment. He was also subsequently convicted and sentenced on 20 November 2017 to 162 days' imprisonment for assault on a police constable. He is properly described as a persistent offender.

43. As regards his index offence of dangerous driving, Judge Hopkins described it as a case of "road rage" in which he reversed his vehicle into the victim's vehicle at significant speed at a time when the victim's passenger was alighting from the vehicle. Overall, the judge recognised that the appellant has a history of violence and public disorder. I agree with those findings.

44. However, Judge Hopkins accepted that the appellant had come to realise that he could not continue with what the judge described as "appalling behaviour". Both his parents and sisters have also noticed a change in him. The appellant told the judge that he had come to his senses about three months into his sentence, largely prompted by the realisation of the effect his imprisonment has on his relationship with his children.

45. In his oral evidence before me, the appellant (who since the judge's decision has been released from detention) lives with his sister in Bristol. He told me that he has lots of contact with his children, who live with their mother in Wolverhampton. He speaks to them every day and he sees them four or five times a month when he travels to the Midlands, previously to see his probation officer, and stays with a friend overnight with the children. He told me that he believed that he would not commit any further offences because he wanted to see his children and did not want to spend his life being in prison. He liked his freedom too much. He said that he was a bit naïve before but now that had changed. He said that his probation officer (whom he named and with whom he clearly had a good professional relationship) had helped him. She had helped him find work although he was not currently working and he indicated that he was not sure whether he could as an EEA national subject to deportation. He said that his relationship with his children was good and they did not know about his offending. He was getting to know his young son since leaving detention. He told me that the Victim Awareness course had taught him to look at the issues from the point of view of victims and how it affects them. He had found it helpful. His workbook is included within the documents. He said that he would like to settle down and go to university and study engineering.

46. The appellant told me in cross-examination that his former partner was happy that he should continue to have contact with his children upon which they had reached an agreement without court involvement. She had a new partner and she was considering going to university.

47. He told me that he had come to the UK from Sweden when he was 9. He had not been back. He told me that he could not speak Swedish and that he had no family in Sweden. He told me that his close family, namely his parents and sisters, lived in the UK. He had only been to school for one or two years in Sweden before coming to the UK.

48. In her oral evidence, the appellant's mother told me that to the best of her knowledge he had not offended and that his relationship with his family had improved especially with his children. She told me that he was "calmer" now. She told me that he saw his children and that she visited him in Bristol where he was living with his sister and she also saw her grandchildren.

49. The appellant's mother confirmed that they had no family in Sweden. She told me that her husband was a retired marine engineer and that he was currently in Ghana where they had family.

50. Judge Hopkins found that, prior to his imprisonment, the appellant was integrated in the UK. In my earlier decision, I rejected the Secretary of State's challenge to that finding at paras [26]–[27]. It is clear that the appellant was firmly integrated into the UK at the time of the deportation decision. He had come to the UK in 2000 aged 9. At the date of decision he had been in the UK over seventeen years. He had attended school in the UK and, as I noted in my earlier decision, Judge Hopkins found that he had been integrated despite his persistent criminal offending and he had been integrated to a "significant degree" prior to the beginning of his offending, the bulk of which occurred between January 2007 and November 2017.

51. The appellant has no family in Sweden. I accept on the basis of his evidence, that of his mother and the supporting documents, that the appellant has, and continues to, improve in his attitude to his offending. Imprisonment has, as Judge Hopkins remarked, changed the appellant. I accept the appellant's intention is to avoid any offending in the future. However, as Judge Hopkins found in his decision, and whilst the evidence (reinforced before me) demonstrates that the appellant has "turned a corner" (my words, not those of Judge Hopkins) and that he presents "as very much less of a threat now", there is nevertheless a risk, albeit a low one, that he may reoffend in the future. As Judge Hopkins found, and I agree, "the risk of his re-offending has [not] completely gone away".

52. Nevertheless, rehabilitation, which I accept on the evidence is occurring to the appellant and is likely to be assisted by the support of his family (he lives with one sister and his mother is clearly a concerned parent for him), will likely be hampered by his return to Sweden where he has not lived since 2000 (when aged 9), where he does not speak the language, and where he has no family at all.

53. It is accepted by Mr Mills that there is no evidence to show that the appellant did anything wrong or had any adverse adjudications against him whilst in prison.

54. Since the appellant has been released from both his custodial sentence and immigration detention (the latter in April 2018), he has successfully completed his probation (December 2018) and has not committed any further offences. He has, in my judgment, sought to continue his life firmly integrated in the UK as best he can with his children and also, I accept, by seeking work although there are some difficulties with that as (and I accept his explanation about this) he is unsure whether he can work as an EEA national subject to deportation.

55. The appellant's period of imprisonment was relatively brief. Following conviction, it was between 22 September 2017 and 27 December 2017. That is a period of three months. As I understand it, the appellant did not serve the usual half of the custodial sentence as a prior period of tagged curfew whilst on bail and a pre-sentence period on remand, were taken into account in determining the actual period of his sentence that he served (see sentencing remarks at A3 of the respondent's bundle). The exact period of his imprisonment on remand was not identified before me. It appears from the sentencing remarks that it was 22 days. In determining the appeal, I bear in mind that the appellant has, in fact, served a little more than the 3 months due to this

period on remand prior to his sentence. My reference in this determination to the period of imprisonment being 3 months is to be taken as reflecting the actual slightly longer period of 3 to 4 months.

56. In any event, he had lived in the UK for seventeen years prior to his imprisonment in September 2017 when he served a short period of imprisonment of three to four months. Given his prior firm integration in the UK, and given his conduct and positive attitude and intention whilst in prison and subsequent to his release, I am satisfied that that period of imprisonment has not broken his integrative links with the UK. His life was, and remains, centred in the UK. That is clearly exemplified by his continued relationship with his children and his desire to continue to work in the UK.

57. I am satisfied, therefore, that at the date of the respondent's decision, namely 13 December 2017 the appellant had been continuously resident in the UK for at least ten years, in fact over seventeen years. He is, therefore, a person to whom reg 27(4) applied. He can only be deported if there are "imperative grounds of public security". Mr Mills accepts that the Secretary of State cannot establish that there are any such grounds based upon the appellant's offending or his future risk of offending. Consequently, the appellant's deportation cannot be justified under the EEA Regulations 2016 and on that basis, his appeal must succeed and is allowed.

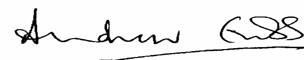
<u>Decision</u>

58. The decision of the First-tier Tribunal to allow the appellant's appeal was set aside in my decision sent on 18 December 2018.

59. I re-make the decision allowing the appellant's appeal under the EEA Regulations 2016 on the basis that it has not been established that there are "imperative grounds of public security" as required to justify his deportation in accordance with EU law.

60. In the light of that decision, it is unnecessary to reach a decision on the appellant's Art 8 claim.

Signed



A Grubb
Judge of the Upper Tribunal

15 March 2019