



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal ref: DA/00182/2018

THE IMMIGRATION ACTS

Heard at Glasgow
on 14 February 2019

Decision and Reasons Promulgated
On 20 February 2019

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

G P

(anonymity direction made)

Respondent

For the Appellant: Mr A Govan, Senior Home Office Presenting Officer

For the Respondent: No appearance

DETERMINATION AND REASONS

1. The parties are as above, but the rest of this determination refers to them as they were in the FtT.
2. On 6 December 2017, the SSHD made a deportation order against the appellant under regulation 33 of the Immigration (EEA) Regulations 2016.
3. FtT Judge Wyman allowed the appellant's appeal by a decision promulgated on 14 August 2018.

4. The SSHD appeals to the UT on the grounds set out in an application dated 21 August 2018.
5. Notice of the hearing was issued on 17 January 2019 to the appellant at the last address recorded with the UT, which appears to be his address for purposes of immigration bail. It is of course the appellant's responsibility to ensure that the tribunal has his current address. He did not appear and was not represented. No communication from him or on his behalf has been received. The hearing proceeded in his absence.
6. The strongest point in the SSHD's grounds, as Mr Govan submitted, is from [15] onwards. The judge held at [57] that the appellant's offending did not reach the level of a threat to public security. That was not the test. His deportation required to be justified by reference to public policy. His offending did not have to reach the level of seriousness which the judge applied.
7. The error is fundamental to the decision, and requires it to be set aside.
8. Mr Govan did not ask for the decision to be remade on the basis of the materials which had been before the FtT. He sought a remit, for a fresh decision to be made in the FtT on up to date information. He indicated that the respondent would be submitting evidence of further criminal convictions incurred by the appellant.
9. Further evidence to be relied upon by the SSHD should be provided to the FtT and to the appellant as soon as practicable. The matter is recorded here to give the appellant advance notice.
10. The appellant should also now consider what evidence to provide to the FtT and (although this is for him to decide) whether to instruct legal representatives. Any preparations should be made immediately upon receipt of this decision. An adjournment of any hearing is not likely to be granted if shortage of time to prepare results from delay.
11. Under section 12 of the 2007 Act, and under Practice Statement 7.2, the case is remitted to the FtT for a fresh hearing. The member(s) of the FtT chosen to consider the case are not to include Judge Wyman.
12. The FtT made an anonymity direction. Although there is little apparent justification for departing from the presumption in favour of public justice, anonymity is retained at this stage.



Dated 14 February 2019
UT Judge Macleman