Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: DA/00353/2018
DA/00354/2018
HU/08808/2016
HU/08809/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reason Promulgated**
On 10 December 2019	**On 17 December 2019**

Before

Mr Justice Goss
Upper Tribunal Judge Pickup

Between

Secretary of State for the Home Department

Appellant

and

GL
HC
[Anonymity direction made]

Claimants

Representation:
For the claimants: Ms R Chapman, instructed by JCWI
For the appellant: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269), I make an anonymity direction. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant(s).

1. This is a decision to which both judges have contributed.

2. This is the Secretary of State's appeal against the decision of First-tier Tribunal Judge Loke promulgated 15.7.19, dismissing the claimants' linked appeals against the decisions of the Secretary of State, dated 30.3.15 and 22.5.18, to refuse their human rights claims and to remove them from the UK pursuant to the Immigration (EEA) Regulations 2016 (the Regulations).

3. The crucial issue in the appeal is whether the First-tier Tribunal Judge erred in law in finding that the criminal offending behaviour of the two claimants did not represent a 'genuine, present and sufficiently serious threat affecting one of the fundamental interests of society,' and whether that conclusion within the range of findings open to the judge on the evidence before the Tribunal and adequately reasoned.

4. Designated First-tier Tribunal Judge Macdonald granted permission to appeal on 29.8.19, finding that, whilst the judge's reasoning is clear, it is arguable that the offences for which the claimants were convicted, resulting in sentences of imprisonment, "fell into the category of an extreme case which therefore demanded a different outcome and as such it is arguable that the judge erred in law."

5. Thus, the matter came before us sitting as a panel of the Upper Tribunal on 10.12.19.

6. The tribunal has received the Secretary of State's skeleton argument, drafted by Mr A McVeety and dated 25.9.19, and the claimants' Rule 24 Response, drafted by Ms R Chapman and dated 18.11.19. We have taken these into account along with the helpful oral submissions of the representatives at the hearing before us.

Error of Law

7. For the reasons set out below, we have concluded that there was no material error of law in the making of the decision of the First-tier Tribunal.

Relevant Background & Chronology

8. The relevant background can be summarised as follows.

9. The two claimants were in a relationship with each other in Jamaica before coming to the UK. Their son, J, was born in Jamaica in 1998.

10. HC came to the UK as a visitor in 1998. He failed to return to Jamaica and became an overstayer. In 2000, he attempted to regularise his immigration status after marrying a British citizen. The marriage was regarded as a sham and leave was refused. He became appeal rights exhausted in 2005.

11. GL came to the UK as a visitor in 2000, leaving J in Jamaica. She failed to return and became an overstayer. In 2004 she married a British citizen, as a result of which she

was granted Leave to Remain until 2006. In 2005 J was granted leave to enter the UK to join his mother GL. In 2006 GL and J were granted Indefinite Leave to Remain on the basis of the relationship with the British citizen.

12. GL and HC married in the UK in 2007. Their second child S was born in the UK in 2008 and is a British citizen. HC was granted Leave to Remain until 2012 as the spouse of a person settled in the UK.

13. Following conviction after trial at the Inner London Crown Court, GL and HC were sentenced for a series of criminal offences of fraud and related conduct on 13.10.11. GL was convicted of entering into a sham marriage with a British citizen so as to obtain Indefinite Leave to Remain for herself and J by deception. GL was sentenced to a total term of 8 years 9 months' imprisonment. For his part in the offences, HC was sentenced to a term of 3 years imprisonment. We have addressed the nature of the offending behaviour separately, below.

14. Their children J and S were taken into the care of the local authority. They were returned to the care of HC after his release from prison in October 2014. GL was released from prison the following year. Their third child SS was born in 2017.

15. In the meantime, in November 2014 both claimants were served with decisions to deport them from the UK and the deportation order was made on 20.3.15. Following further submissions, on 22.5.18 a further deportation decision was made under the Regulations.

16. On 23.5.18 the claimants appealed the decisions to the First-tier Tribunal. Applying regulations 23 and 27, Judge Loke concluded that the evidence did not demonstrate that the claimants posed a genuine, present and sufficiently serious threat to the requirements of public policy or public security to justify removal. He consequently allowed the appeal of both appellants on both EEA and human rights grounds.

The Grounds of Appeal to the Upper Tribunal

17. The grounds of application for permission to appeal, largely repeated in the Secretary of State's skeleton argument, are, first, that despite referring to the Judge's Sentencing Remarks (JSR) at [14] and [15] of the decision, the First-tier Tribunal Judge erred in failing to take into account the "egregious and wanton dishonesty of GL, identified there, which was reflected in the severe sentence GL received."

18. The second ground asserts that the offences were serious enough to engage the Bouchereau EU:C:1977:172 test endorsed by the Court of Appeal at [71] of its decision in SSHD v Robinson [2018] EWCA Civ 85, as "being the kind of extreme case in which past conduct alone may suffice as constituting a present threat to the requirement of public policy."

19. The third ground submits that the First-tier Tribunal Judge made a material misdirection in law at [33] of the decision in relying on the opinion of the Advocate-General in Bouchereau that it was only in exceptional cases, where the personal conduct of an alien had caused "deep public revulsion," that public policy required removal on the basis of previous conduct alone. The Secretary of State argued that at [66] of Robinson the Court of Appeal had rejected that proposition.

Preliminary Matters

20. At the outset of the hearing before us we sought to clarify with the two representatives the ambit of the appeal and the issues to be determined by the Upper Tribunal.

21. No issue was taken by Ms Chapman as to whether either of the claimants was now entitled to permanent residence under the Regulations, on the basis of five years residence. She conceded that, unlike a family member of an EEA national, a derivative right to reside under the Regulations does not lead to a right of permanent residence.

22. A point canvassed at the hearing, but which was not pursued by either party, was whether the removal decision invalidated GL's Indefinite Leave to Remain so that the third child was not a British citizen. We consider this issue irrelevant to our considerations.

The Offending Behaviour

23. Between [12] and [15] of the decision, the judge described and summarised the nature of the claimants' offending behaviour. We have carefully read and taken fully into account the JSR, which followed the conviction of both claimants after trial. Their criminal conduct is described by the sentencing judge in some detail. We have summarised below the essential features.

24. GL first entered into a sham marriage in order to obtain leave to remain and British citizenship. She then inveigled her way into the life of an elderly man and when he died forged his will. As a result, she was able to take over his home, which she let out to another for rent, and emptied his bank account. She employed contractors to work on the home but failed to pay them, so that one of them was unable to pay the rent on his own home and had to move out. GL continued with similar conduct in relation to a second deceased victim, forging a second will, attempting to take over this second person's home, took funds from her bank account, and impersonated this person to purchase items for GL's own home. When the police investigated, she fabricated a claim that the victims had threatened to shoot her and members of her family. She fabricated documents to support her case at trial.

25. The JSR makes clear that these offences were at the very highest end of the spectrum for this type of offending. The judge described GL engaging in dishonest conduct,

motivated by personal interest, greed, ruthlessness, and a complete disregard for others. She sought to manipulate others and lied with an ease and appetite the judge had rarely experienced. The duration of the conduct and the type of offending meant that a custodial sentence was inevitable. She was responsible for forging wills and milking the estate of deceased victims, frustrating the rightful heirs. In defending herself, she was prepared to besmirch the character of others who were entirely innocent victims of her machinations. This, the judge described as a dishonest and wicked course of action. At every step she lied and deceived to seek to prosper personally. The offences were aggravated by her persistent claims during the trial that another person was the instigator in an effort to escape criminal liability. In doing so, she sought to soil the impeccable characters of two people.

26. HC's involvement was to seek to benefit from the illegal acquisition of the second person's home, knowing full well the bogus circumstances in which he and GL came into possession of the property. They both stood to make substantial financial gain from their dishonest course of conduct. He also chose to produce a forged document intended to falsely bolster his defence at trial. The judge stated that he had "exposed his dishonesty to the core". In a range of 3 to 6 years, the judge imposed 3 years imprisonment.

27. We find that the First-tier Tribunal did not underestimate the seriousness and appalling nature of the offending behaviour. At [15] of the decision, Judge Loke described the offences as being on any view, "utterly despicable." At [33] of the decision he found the offences "undoubtedly serious". However, having carefully considered the relevant case authorities, the judge rejected the suggestion that the criminal conduct fell into the category of an extreme case so that removal was justified on the basis of the offences alone. The judge went on to conduct a balancing exercise, concluding that the facts of the offences "fell far short of justifying removal."

The Relevant Regulations

28. The claimants' respective rights under the Regulations are on the basis of a derivative right to reside as the primary carers of a British citizen, namely their three children. Although the children obtained their present status as British citizens through GL's sham marriage, the Secretary of State has not taken any steps to deprive them of citizenship.

29. In its decisions, the Secretary of State accepted that GL has a derivative right to reside in the UK under Regulation 16(5) as the primary carer of a British citizen but did not accept that HC also has a derivative right to reside. At [27] to [30] of the impugned First-tier Tribunal decision, Judge Loke found that HC also fell to be considered as a primary carer, noting that the Secretary of State conceded that both GL and HC had a genuine and subsisting relationship with their three children, that they all lived together as a family unit, and that it was in the best interests of the children to continue as part of the family unit. In the circumstances, the First-tier Tribunal Judge

concluded that HC fell within regulation 16(8) and as both parents had assumed equal care responsibility simultaneously on the birth of their children, HC was not excluded by regulation 16(10), so that he also has a derivative right to reside in the UK.

30. Despite the assertions to the contrary in the Secretary of State's decisions, at the outset of the appeal hearing Ms Cunha accepted that both claimants did have a derivative right to reside in the UK under regulation 16 on the basis of being the primary carers of their British citizen children. Given this concession, we do not need to consider further the ambit of regulation 16.

Justification for removal from the UK under the Regulations

31. In the impugned decision of 22.5.18, the Secretary of State considered that deportation of both GL and HC was justified on serious grounds of public policy and public security, pursuant to regulations 23 and 27.

32. As currently in force, regulations 23 and 27 are as follows:

> "*Exclusion and removal from the United Kingdom*
>
> 23.—(1) A person is not entitled to be admitted to the United Kingdom by virtue of regulation 11 if a refusal to admit that person is justified on grounds of public policy, public security or public health in accordance with regulation 27.
>
> (2) A person is not entitled to be admitted to the United Kingdom by virtue of regulation 11 if that person is subject to a deportation or exclusion order, except where the person is temporarily admitted pursuant to regulation 41.
>
> (3) A person is not entitled to be admitted to the United Kingdom by virtue of regulation 11 if the Secretary of State considers there to be reasonable grounds to suspect that the person's admission would lead to the misuse of a right to reside under regulation 26(1).
>
> (4) A person is not entitled to be admitted to the United Kingdom as the family member of an EEA national under regulation 11(2) unless, at the time of arrival—
>
> (a) that person is accompanying the EEA national or joining the EEA national in the United Kingdom; and
>
> (b) the EEA national has a right to reside.
>
> (5) If the Secretary of State considers that the exclusion of the EEA national or the family member of an EEA national is justified on the grounds of public policy, public security or public health in accordance with regulation 27 the Secretary of State may make an order prohibiting that person from entering the United Kingdom.
>
> (6) Subject to paragraphs (7) and (8), 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—
>
> (a) that person does not have or ceases to have a right to reside under these Regulations;

(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 27; or

(c) the Secretary of State has decided that the person's removal is justified on grounds of misuse of rights under regulation 26(3).

(7) A person must not be removed under paragraph (6)—

(a) as the automatic consequence of having recourse to the social assistance system of the United Kingdom; or

(b) if that person has leave to remain in the United Kingdom under the 1971 Act unless that person's removal is justified on the grounds of public policy, public security or public health in accordance with regulation 27.

(8) A decision under paragraph (6)(b) must state that upon execution of any deportation order arising from that decision, the person against whom the order was made is prohibited from entering the United Kingdom—

(a) until the order is revoked; or

(b) for the period specified in the order.

(9) A decision taken under paragraph (6)(b) or (c) has the effect of terminating any right to reside otherwise enjoyed by the individual concerned."

"*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 public 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 a right of permanent residence under regulation 15 and who] has resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision; or

(b) is under the age of 18, unless the relevant decision is in the best interests of the person concerned, as provided for in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989.

(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 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 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 be imminent;

(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;

(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) In the case of a relevant decision taken on grounds of public health—

(a) a disease that does not have epidemic potential as defined by the relevant instruments of the World Health Organisation or is not a disease listed in Schedule 1 to the Health Protection (Notification) Regulations 2010(18); or

(b) if the person concerned is in the United Kingdom, any disease occurring after the three month period beginning on the date on which the person arrived in the United Kingdom, does not constitute grounds for the decision.

(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.)."

The First-tier Tribunal's Assessment

33. We noted that at [31] of the decision, the judge suggested that the respondent considered that deportation of the claimants was justified on 'serious grounds' of public policy and public security, which affords a higher level of protection to those with a permanent right of residence. In fact, the decision in relation to HC made clear that it was not accepted that he met entitlement to permanent residence and thus he could not benefit from the higher level of protection under regulation 27(3). Both representatives agreed with our assessment that despite the statement at [31] the judge proceeded correctly in relation to both claimants by adopting the lowest standard of protection provided for under regulation 27.

34. It is clear that the judge made a careful consideration as to whether the removal of the claimants was justified on grounds of public policy or public security on the basis

that that their conduct represented, "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 be imminent," (regulation 27(5)(c)).

35. The judge took into account the nature of the criminal behaviour of both claimants, and as stated above, at [15] of the decision, found that "On any view, these offences are utterly despicable."

36. At [32] to [33] the judge concluded that the offences did not fall within the 'past conduct alone' test set out in the ECJ's decision in Bouchereau EU:C:1977:172, at [28] and [29] that:

> "The existence of a previous criminal conviction can … only be taken into account in so far as the circumstances which gave rise to that conviction are evidence of personal conduct constituting a present threat to the requirements of public policy.
>
> Although, in general, a finding that such a threat exists implies the existence in the individual concerned of a propensity to act in the same way in the future, it is possible that past conduct alone may constitute such a threat to the requirements of public policy."

37. At [33] of the decision, the judge noted that in Bouchereau the Advocate General suggested that it was only in exceptional cases, where the personal conduct of an alien had caused "deep public revulsion," that public policy required his removal on the basis of the previous conduct alone.

38. The judge correctly observed that this approach was cited with approval in Robinson. The facts in Robinson involved supplying class A controlled drugs for which the defendant was sentenced to imprisonment for 2 years 6 months. At [71] of the Court of Appeal's judgement, Lord Justice Singh, with whom the other Lord Justices agreed, stated that what is intended is "the kind of extreme case in which past conduct alone may suffice as constituting a present threat to the requirements of public policy", which public policy he observed was a broader concept than a threat to the public.

39. In order to understand the nature of such an extreme case, the Court of Appeal in Robinson, reviewed a number of other decisions, some of which we have summarised below.

40. In Straszewski v SSHD [2015] EWCA Civ 1245, Moore-Bick LJ stated that grave importance is to be attached to the right of free movement which can be interfered with only in cases where the offender represents a serious threat to some aspect of public policy or public security:

> "Save in exceptional cases, that is to be determined solely by reference to the conduct of the offender (no doubt viewed in the context of any previous offending) and the likelihood of re-offending. General considerations of deterrence and public revulsion

> *normally* have no part to play in the matter. In these respects, the principles governing the deportation of foreign criminals in general differ significantly from those which govern the deportation of EEA nationals who have acquired a permanent right of residence… (emphasis added)."

41. At [80] of Robinson, the Court of Appeal held that Bouchereau continues to bind the courts of this country, being a decision of the ECJ. At [85] Lord Justice Singh stated:

> "…I am also of the view that the sort of case that the ECJ had in mind in Bouchereau, when it referred to past conduct alone as potentially being sufficient, was not the present sort of case but one whose facts are *very extreme*. It is neither necessary nor helpful to attempt an exhaustive definition but the sort of case that the court was thinking of was where, for example, a person has committed grave offences of sexual abuse or violence against young children," (emphasis added).

42. The Court of Appeal went on to note that in ex p Marchon [1993] IAR 384, the defendant was convicted of an offence of conspiracy to import 4 ½ kg of a Class A controlled drug (heroin). He was sentenced to 11 years' imprisonment. The offence was described by the Court of Appeal in Marchon as "especially horrifying" and "repugnant to the public" because it had been committed by a doctor.

43. It follows from the above that in normal circumstances, public revulsion has no part to play in the Bouchereau 'past conduct alone' test. The facts must be 'exceptional' and/or 'very extreme'. Whilst it is impossible to provide an exhaustive definition, the Court of Appeal had in mind cases typified as those involving grave offences of sexual abuse or violence against young children. It is clear from a reading of the First-tier Tribunal decision, particularly between [32] and [33] of the decision that Judge Loke applied his mind to the Bouchereau test and carefully considered whether the offending behaviour of GL and HC fell to be considered as one of those very exceptional or extreme cases. He concluded that it did not.

44. During submissions by both representatives we queried whether the Secretary of State was right to consider both claimants as being in the same category of a very extreme and/or exceptional case in the sense intended in Bouchereau and Robinson. The offences were certainly despicable and repulsive, as reflected by the sentences imposed. GL was sentenced to 8 years and 9 months as the 'prime mover' in a series of offences of fraud and dishonesty. However, HC received only 3 years imprisonment for his limited role in only two of 25 counts on the indictment. Ms Cunha maintained that HC had participated in and benefited from the same appalling offending behaviour, even though his participation was more limited, so that he also met the Bouchereau test. Ms Chapman argued that it was plain that there was a distinction to be drawn between GL on the one hand and HC on the other, marked by the length of sentence imposed but also reflected in the JSR. After due consider of both arguments, we are satisfied that whether or not GL met the Bouchereau test, HC's conduct falls far from being within the same category as GL's offending behaviour.

45. In considering whether there was an error of law in the making of the decision of the First-tier Tribunal, we remind ourselves that we are not making the assessment of the offending behaviour for ourselves as judges of first instance. What we have to consider is whether Judge Loke was entitled to reach the conclusion that the offending behaviour in this case did not reach the Bouchereau test. We have asked ourselves whether the appalling offending behaviour of GL and/or HC was so obviously very extreme or exceptional, causing such deep public revulsion, that to conclude that the Bouchereau test was not met would be irrational and therefore an error of law. We find that, whilst serious and truly dreadful, the offending behaviour in this case was not such as to admit of only one conclusion on this issue. Whilst a different judge may have reached a different conclusion, we are satisfied that the judge's finding on this issue was open to her on the facts of the case and was adequately reasoned. It follows that we find no error of law on this ground of appeal.

46. The third ground of appeal suggested that Judge Loke misdirected herself on the Bouchereau principle and that in Robinson the Court of Appeal had rejected the Advocate General's proposition that "it was only in exceptional cases, where the personal conduct of an alien had caused deep public revulsion that public policy required his removal on the basis of the previous conduct alone." We pointed out to Ms Cunha that this assertion of a misdirection, repeated in the skeleton argument, is misconceived. The Court of Appeal at [66] of Robinson did not reject that proposition. What they did was to agree with counsel for the Secretary of State that the suggestion by the Advocate General that offending behaviour must also be based on "an imperative reason relating to public security" was not adopted by and did not feature in the ECJ's decision in Bouchereau. Ms Cunha accepted the force of the argument and in the circumstances did not pursue the third ground of appeal.

47. The remaining ground and issue relates to the remaining paragraphs of the First-tier Tribunal decision, particularly in [34], in which Judge Loke conducted her assessment as to whether the claimants' personal conduct represented a genuine, present and sufficiently serious threat to public policy or public security to justify removal, applying the various considerations prescribed under regulation 27. We note that the judge stated that propensity to commit further offences was crucial to that assessment. The judge then set out a number of factors taken into account, listed (a) to (e) in [34].

48. Again we remind ourselves that we are not ourselves making the assessment but considering the submission of the Secretary of State, represented by Ms Cunha, that despite referring to the JSR, Judge Loke failed to take into account the 'egregious and wanton dishonesty' of GL, reflected in the severe length of imprisonment imposed. However, we are satisfied that the decision makes clear that the judge did take full account of the nature of the offending behaviour. At the end of [34] the judge made it clear that the evidence had been "viewed overall" and there is reference within that paragraph to the JSR.

49. We have carefully considered whether the judge provided adequate reasoning to justify the conclusion that their offending behaviour did not pose a genuine, present and sufficiently serious threat affecting one of the fundament interests of society. We note that reliance was place in particular on the length of time since the offending conduct in 2011 and that no further offending has occurred since their release from prison. It was also relevant that the OASYS report from 2017 assessed GL's risk of reoffending as low. Similarly, the 2017 probation report assessed GL's risk of harm to the public as low and concluded that there was a low risk of offending generally. More significantly, a more recent probation report from May 2019 confirmed that GL had attended all probation appointments and completed an array of courses, as a result of which her risk of causing serious harm to the public was assessed as low and the risk of offending generally was also assessed to be low.

50. Whilst at this final stage the judge might have referred again and in more detail in this assessment to the seriousness of the offending behaviour, it is clear that in a relatively short decision, the judge gave anxious consideration to the offending behaviour giving rise to an increased public interest in removal of the claimants. That the judge's remarks at [15] of the decision describing the offending as being at the very highest end of the spectrum for that type of offending and concluded that on any view the offences were "utterly despicable," indicate that the seriousness of the conduct was at the forefront of the judge's assessment. Further, the very fact that the judge was mindful of the Bouchereau test and had, for that reason, at [32] to [33] of the decision carefully considered the level of seriousness of the offending behaviour in relation to the category of a very extreme and exceptional case such as to cause 'deep public revulsion' provides a strong and clear indication that the assessment was properly balanced.

51. Considering the facts of this case and the decision very carefully, we are satisfied that the judge did not overlook and took fully into account the serious offending behaviour, particularly of GL. However, the judge was bound by the requirements of regulation 27(5)(c) that the personal conduct "must represent a genuine, present and sufficiently serious threat". There was strong and uncontradicted evidence that notwithstanding the seriousness of the offending behaviour some 8 years previously, the risks of further offending or harm to the public were consistently low.

52. It is also to be noted that under regulation 27(5)(e) a person's previous criminal convictions do not in themselves justify the decision. 27(5)(b) also provides that the decision must be based exclusively on the personal conduct of the person concerned, which would include behaviour since the offences were committed. 27(5)(a) also requires the decision to comply with the principle of proportionality.

53. It was for the judge to assess on the evidence whether the requirements justifying removal were met in this case. Whilst a different judge may have reached a different conclusion about one or both of the claimants, we are satisfied that the findings was open to the judge on the facts of the case and that she has provided adequate

reasoning to support the conclusion reached. We find no error in the way in which the judge conducted the assessment.

54. It follows from the above, that we find no error in the making of the decision of the First-tier Tribunal so that the appeal of the Secretary of State must be dismissed.

Decision

55. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

We do not set aside the decision.

The decision of the First-tier Tribunal stands, and the appeal of each claimant remains allowed.

We make no order for costs.

Signed

Upper Tribunal Judge Pickup

Dated 13 December 2019