



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

Appeal Number: DA/00760/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 17<sup>th</sup> June 2019**

**Decision & Reasons Promulgated  
On 15<sup>th</sup> August 2019**

**Before**

**UPPER TRIBUNAL JUDGE JACKSON**

**Between**

**JOAO [B]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**And**

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

Respondent

**Representation:**

For the Appellant: Mr R Khubber of Counsel, instructed by Turpin & Miller LLP  
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Hollingworth promulgated on 8 April 2019, in which the Appellant's appeal against the decision to make a Deportation Order against him under the Immigration (European Economic Area) Regulations 2016 (the "EEA Regulations") dated 7 November 2018 was dismissed.
2. The Appellant is a national of Portugal, born on 23 October 1979, who claims to have arrived in the United Kingdom in August 2004. On 16 April 2018, the Appellant was convicted of robbery and possession of an

offensive weapon in a public place, further to which he was sentenced to 3 years' imprisonment and ordered to pay a victim surcharge.

3. The Respondent's decision was on the basis that the Appellant had not acquired a right of permanent residence in the United Kingdom, such that he was only entitled to the lowest level of protection under the EEA Regulations as it was not accepted that the Appellant had been resident in the United Kingdom for a continuous period of five years exercising treaty rights, in particular because there was no evidence to confirm his claimed employment. The Respondent made detailed reference to the Appellant's offence, that he posed a medium risk of harm to the public and that although offence-related courses had been attended whilst in custody, there was insufficient evidence to show that the Appellant had fully and permanently addressed all of the reasons for his offending behaviour. Further, the Appellant had not demonstrated that he would be able to financially support himself on release from prison and he would have no fixed accommodation. It was considered that the Appellant would likely revert to offending behaviour to support himself in the absence of employment and stable accommodation.
4. The Respondent concluded that the Appellant therefore posed a genuine, present and sufficiently serious threat to the public to justify his deportation on grounds of public policy. The Appellant's deportation was considered to be proportionate given that he was an adult male, in good health, who had spent the majority of his life in Portugal, where he faced no language barriers on return and from where he was not estranged. There was no reason why the Appellant could not continue to work towards rehabilitation in Portugal.
5. The Respondent gave separate consideration to the Appellant's private and family life under Article 8 of the European Convention on Human Rights through the prism of paragraphs 398 and following of the Immigration Rules, considering in particular the Appellant's claimed family life with two children in the United Kingdom. The Appellant failed to provide any evidence in relation to his claimed children and it was not therefore accepted that he had a genuine and subsisting parental relationship with them and nothing to suggest that it would be unduly harsh for the children to live in Portugal or remain in the United Kingdom without the Appellant. The Appellant did not claim to have a partner in the United Kingdom and there were no very compelling circumstances to outweigh the public interest in deportation.
6. By the time of the First-tier Tribunal hearing, by way of letter dated 18 February 2019, the Respondent had accepted that not only had the Appellant acquired permanent residence in the United Kingdom, but also that he had been resident here for over 10 years. The criteria to be applied to any deportation is therefore that there must be imperative grounds of public security.

7. Judge Hollingworth accepted the imperative grounds of public security test was applicable to this Appellant and went on to dismiss the appeal in a decision promulgated on 8 April 2019. The First-tier Tribunal considered the latest available OASys report in respect of the Appellant and found that the conclusions therein that the Appellant posed a low risk of reoffending were not sustainable on the facts contained therein. The Appellant was found to represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, namely the protection of the public against knife crime and overall it was found that deportation was proportionate, meeting the criteria of imperative grounds of public security which outweighed all of the factors in favour of the Appellant.
8. Separate consideration was given to the Appellant's circumstances under the Immigration Rules and section 117C of the Nationality, Immigration and Asylum Act 2002; but the Appellant did not fall within any of the exceptions to deportation and his deportation was found not to be a disproportionate interference with his right to respect for private and family life under Article 8 of the European Convention on Human Rights.

### **The appeal**

9. The Appellant appeals on three grounds. First, that the First-tier Tribunal gave insufficient reasons for departing from the conclusions in the OASys report. Secondly, that the First-tier Tribunal erred in law in concluding that offences such as robbery, when committed outside of a significant organised enterprise, are offences which do not "fall outside the scope of the concept of imperative grounds of public security". Thirdly, that the First-tier Tribunal's decision is perverse in finding that this Appellant's offending is capable of engaging the imperative grounds standard at all.
10. At the oral hearing, Mr Khubber relied on the written grounds of appeal and submitted that the First-tier Tribunal had misdirected itself in law in paragraph 14 of the decision and essentially reached a conclusion which was perverse on the facts. This Appellant has been convicted of a single offence of robbery, to which he pleaded guilty and received a sentence which was at the lower range of those which could have been imposed. The Appellant did not have a history of similar convictions, nor was he considered to be a high risk for reoffending and could not reach the high threshold of imperative grounds for an isolated offence of this nature.
11. Mr Khubber accepted that there was no exhaustive list of offences that could potentially be relevant for a decision on imperative grounds, but submitted that the type of offence and its seriousness would be relevant. He referred to examples of types of offences and sentences which would be illustrative of the types of offending required for deportation on imperative grounds, for example sentences of over six years for organised drug crime, manslaughter and child trafficking. Such offences are of a very different nature to the single offence committed by the Appellant.

12. In the First-tier Tribunal's decision, there was an impermissible conflation of a general concern about the extent and seriousness of knife crime in the United Kingdom and the need for a deterrence against further offences rather than a focus on this particular Appellant and the risk he may pose.
13. On behalf of the Respondent, Mr Kotas submitted that it was wrong to look for a particular offence or category of offences to meet the requirement of imperative grounds given that there is no such list. The First-tier Tribunal made an appropriate self-direction in paragraph 14 to this effect that there was no category of offending to satisfy the test but a need for an individual examination on the facts of the specific case. The First-tier Tribunal focused on a broad evaluation of the risk to public security and the national concern of an epidemic of knife crime, a matter of acute concern to both the government and the public. The Appellant has shown that he has the potential to carry out a knife attack and on the specific facts, the First-tier Tribunal was entitled to find that he posed a sufficient risk to the public to meet the imperative grounds test. In particular, the factors which contributed to the commission of his offence were shown to all continue to exist on his release from prison. The Appellant is still estranged from his family and there is uncertainty over employment and housing. In these circumstances, the decision of the First-tier Tribunal was not perverse or irrational.

### **Findings and reasons**

14. In relation to the first ground of appeal, as to the adequacy of reasons given by the First-tier Tribunal for departing from the conclusions in OASys report, it is clear from the decision of the First-tier Tribunal that the Respondent had taken significant issue with the conclusions, as set out in paragraphs 8 to 11 of the decision. In summary, the Respondent noted the triggers leading to the Appellant's previous offence, namely that he was of no fixed abode, was not in employment nor did he have any available finances and he was estranged from family members.
15. The OASys report refers to the offence having been committed out of financial desperation and due to the Appellant lacking in problem-solving skills. It is also clear from the OASys report and from the Appellant's own evidence that all of the circumstances leading to his previous offence would exist on release from prison, given that he had no stable accommodation available, no employment and although there was some evidence of a prospect of re-establishing a relationship with his children, this was not to resume living with them, nor for his relationship with his ex-partner to resume. In these circumstances, the Respondent's position was that the Appellant would find himself in the same circumstances with a propensity to reoffend. In essence, the First-tier Tribunal agreed with the Respondent and found that no adequate explanation had been contained in the OASys report to explain the assessment of level of risk posed in the future, nor that the level of risk was sustainable in light of the written content of the report.

16. I find no error of law by the First-tier Tribunal in rejecting the conclusions as to the future risk of reoffending and harm contained in the OASys report for the reasons set out in the decision. Those findings were clearly open to the First-tier Tribunal on the evidence before it. Having considered the OASys report for myself, the conclusions in terms of risk of reoffending and risk of harm are inexplicable and inconsistent with the analysis of offending behaviour and circumstances leading to the offence. It is clear that all of the risks and circumstances leading to the previous offence still existed and would remain so on the Appellant's release from prison with no identification of any other positive factors to prevent further offending. The First-tier Tribunal were, in the circumstances, entirely justified in having regard to the substance rather than the percentage conclusions in the OASys report when considering what risk the Appellant posed in the future. An OASys report is of course relevant, but its conclusions are not determinative of the assessment required by the First-tier Tribunal, as confirmed by the Upper Tribunal in Vasconcelos (risk - rehabilitation) [2013] UKUT 00378 (IAC).
17. The second ground of appeal is that the First-tier Tribunal erred in law in concluding that offences such as robbery, when committed outside of the significant organised enterprise, are offences which do not "fall outside the scope of the concept of imperative grounds of public security". Both parties accept that there is no list or category of offences relevant to the imperative grounds test, albeit on behalf of the Appellant it was submitted that the offence of robbery of which he was convicted was not sufficiently serious to engage such a high threshold. Given the absence of any list or category of offences relevant, I find that this ground of appeal adds nothing of substance to the third and final ground of appeal that essentially the First-tier Tribunal's decision finding that the imperative grounds test was met was perverse following an individual assessment of all the relevant factors.
18. The main substance of the First-tier Tribunal's findings on this point are set out in paragraphs 15 and 16 as follows:
- "15. I do not find that an adequate explanation has been put forward for the offending of the Appellant. The PNC attached to the papers show that the offending which led to the Appellant's imprisonment and to the decision of the Respondent to deport was in fact the first offence committed by the Appellant. He received a sentence of imprisonment of three years in respect of robbery and a term of imprisonment of eight months concurrent for possession of an offensive weapon. This was the box cutter knife. The Appellant had had a long history of employment in the United Kingdom. He has described what happened to him. The Appellant has explained that he split up with his ex-partner about a year before he committed the offence. He went on to explain that he was not working when they split up. He lost his job as he did not go to work for a couple of days. His life had fallen apart. The difficulty which confronts the Appellant is that*

*having been faced with these adverse circumstances he resorted to robbery with a knife. The expulsion decision was taken as reflected in the letter dated 7<sup>th</sup> November 2018. An epidemic of knife crime has now enveloped the United Kingdom across the communities of the United Kingdom. The Appellant chose a box cutter knife in order to commit the offence of robbery. He managed to obtain a very small amount of money. His actions illustrated the consequences involved the carrying of a knife. By his actions the Appellant has become part of the great national crisis now fronting the United Kingdom in terms of the carrying of knives. It is now a matter and was at the time of the expulsion decision of grave national concern. The internal security the population is therefore involved. The seriousness of the threat of knife crime is now recognised and was at the time of the expulsion decision as exceptional. The level of seriousness of the threat has been illustrated by the continuing level of publicity given to the issue. The actions taken by Parliament in terms of legislation in relation to sentencing in this context has been highlighted. I find that the nature of the threat to public security is exceptional based upon the level of knife crime and in the level of public concern. By his personal conduct the Appellant has placed himself within the band of behaviour which has contributed to this threat of the security to the public. This was so at the time of the expulsion decision. The question arises as to whether the protection of the interests of the public can as an objective be attained by less strict means. The difficulty which confronts the Appellant in this context is that he has shown by his behaviour that he is prepared to resort to robbery with a knife if his financial circumstances warrant this.*

*16. I do not find that a sufficient explanation has been provided for the situation which the Appellant found himself given his history of working in the United Kingdom and the record of jobseeker's benefits disclosed in the documentation to which I have referred. I do not find that an adequate explanation has been put forward in the OASys Report in this context in assessing the level of risk posed by the Appellant in estimating firstly how he got into the situation in question in which he decided to resort to his offending and secondly what assurances in fact exist against that background in order to ensure that the Appellant would not find himself in circumstances approximating to those which led to his offending in the first place. I do not find that a sufficient explanation has been put forward by either the Appellant or in the OASys Report in this regard. I do not find that the conclusion in relation to the level of risk posed by the Appellant is sustainable in the circumstances. I find that the Appellant does represent a genuine present and sufficiently serious threat affecting one of the fundamental interests of society namely the protection of the public against knife crime. The Appellant showed by his personal conduct that he was*

*prepared to resort to this behaviour because of his financial position. The decision may be taken on preventative grounds even in the absence of a previous criminal conviction if the grounds are specific to the Appellant. I find that the grounds are specific to the Appellant in this context for the reasons which I have explained so that the decision may be taken on preventative grounds. The OASys assessment refers to a medium risk of harm to the public. I do not find that that assessment is sustainable. The gravamen of the national concern in the context of knife crime relates to the potentiality of the use of a knife. The Appellant has already demonstrated that he is prepared to take with him a box cutter knife when committing the offence of robbery. There is already massive public concern as to the carrying of knives even when other offences are not being committed or not in contemplation. In terms of the risk of reoffending I do not accept the description at the end of the OASys Report that the Appellant is a very low risk as I have referred to this above. I do not accept that he poses a low risk of reoffending. He had been able to work. He had been able to access benefits. He had shown the capacity to work. He had all this over a long period of time. However these factors were not enough.”*

19. Thereafter the First-tier Tribunal considered the proportionality of the decision in paragraphs 17 and 18 of the decision, concluding that the necessary criteria have been fulfilled to uphold the decision of the Respondent, with the finding that the gravity of the offending in applying the criterion of imperative grounds of public security outweighs all those factors in favour of the Appellant remaining.
20. The reasoning of the First-tier Tribunal is not as clear as it could be in relation to the reasons for finding that the imperative test have been satisfied on the facts of this Appellant’s case. It appears that the primary focus and weight of reasoning relies upon the current widespread problem of people carrying knives in the United Kingdom, described as an epidemic which has caused a high level of public concern. The Appellant’s personal circumstances appear to have been taken into account only to the extent that he has “placed himself within the band of behaviour which has contributed to this threat to the security of the public”. The conclusion being that in this context against this background, the nature of the threat to public security was exceptional based upon the level of knife crime and level of public concern. Although there is reference to the exceptional nature of the threat to public security, this seems to be by reference to the general background situation rather than any threat of exceptional nature to public security posed by the Appellant himself. He is afterall likely to be one of probably thousands of individuals who have or do carry knives thereby contributing to the wider problem. Further, although the conclusions of the OASys report that the Appellant poses only a very low risk of reoffending or not accepted, there is no express finding by the First-

tier Tribunal as to what the Appellant's risk of reoffending is and certainly no findings that he poses a high or very high risk.

21. As summarised in the head note in Land Baden-Wurttemberg v Tsakouridis, C-145/09 [2011] 2 C.M.L.R. 11, the Court of Justice summarised imperative grounds of public security as follows:

*“The concept of “imperative grounds of public security” presupposes not only the existence of a threat to public security, but also that such a threat was of a particularly high degree of seriousness. Public security covered both the Member State internal and external security and could be affected by threat to the functioning of the institutions and essential public services and the survival of the population, as well as the risk of serious disturbance to foreign relations or to peaceful co-existence of nations, or a risk to military interests.”*

22. In the context of a person who has committed a single offence of robbery with possession of a knife, for which he was sentenced to 3 years' imprisonment, involving no wider organised crime aspect and in respect of whom, although triggers and circumstances remain for his offending, there is no finding of any high risk of reoffending or high risk of harm; I find that the decision of the First-tier Tribunal to find that the imperative grounds of public security test is met is perverse. The apparent rationale by reference to a knife crime epidemic does not arguably provide sufficient reason for finding that imperative grounds of public security exist on the facts of this case in relation to this Appellant. Whilst not reducing the seriousness of the Appellant's offence, the requisite high degree of seriousness is simply not there on the facts in this appeal. The decision of the First-tier Tribunal does not contain anything approaching adequate reasons for finding such a high threshold has been met on the facts of this case, and the outcome of the appeal is not one which could rationally be reached on the facts as found. I therefore allow the appeal on this ground and set aside the decision of the First-tier Tribunal.
23. In these circumstances, where the Appellant's circumstances and facts as already found could not rationally support a conclusion that he meets the imperative grounds test, I substitute the decision of the First-tier Tribunal to allow the appeal under the Immigration (European Economic Area) Regulations 2016.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal and remake it as follows:  
The appeal is allowed under the Immigration (European Economic Area) Regulations 2016



No anonymity direction is made.

Signed   
2019

Date 8<sup>th</sup> August

Upper Tribunal Judge Jackson