**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: DA/00292/2019

**THE IMMIGRATION ACTS**

**Heard at the Royal Courts of Justice**
**On 19 October 2020**

**Decision & Reasons Promulgated**
**On 14 December 2020**

**Before**

**UPPER TRIBUNAL JUDGE JACKSON**

**Between**

**JUSTYNA ELIZA SOBIERAJ**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**And**

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

Respondent

**Representation:**

For the Appellant: Mr T Lindsay, Senior Home Office Presenting Officer
For the Respondent: Ms K Reid of Counsel, instructed by Signature Law

**DECISION AND REASONS**

1. In a decision dated 7 February 2020, Upper Tribunal Judge Allen found an error of law in the decision of First-tier Tribunal Judge Cohen promulgated on 20 November 2019 which allowed the Appellant's appeal against the Respondent's decision to deport her dated 17 May 2019. For ease I continue to refer to the parties as they were before the First-tier Tribunal, with Ms Sobieraj as the Appellant and the Secretary of

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State as the Respondent. This is the re-making of the Appellant's appeal against deportation.

**The appeal**

*Applicable law*

2. Pursuant to regulation 23(6)(b) of the Immigration (European Economic Area) Regulations 2016 (the "EEA Regulations"), the Respondent may deport an EEA national where that person's removal is justified on the grounds of public policy, public security or public health. Any such deportation must be in accordance with regulation 27 which provides as follows:

> *(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) …*
> *(4) …*
> *(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 heath, 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).*

3. Further to regulation 27(8), Schedule 1 provides as follows:

> ***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 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 presence in the United Kingdom represents a genuine, present and sufficiently serious threat affecting 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 interests of society;*
   (c) *the EEA national or family member 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 public policy and public security requirements in the United Kingdom that EEA decisions may be taken 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 maintain public confidence in the ability of the relevant authorities to take such action;*
   (g) *tackling offence 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 related to the misuse of drugs or crime with a cross-border dimension as mentioned in Article 8391) of the Treat 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 protecting shared values.*

4. Regulation 7 of the EEA Regulations sets out an increased level of protection in certain circumstances as follows:

> (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 …*

5. Regulation 15 of the EEA Regulations sets out the circumstances in which a person acquires the right of permanent residence, which includes, for present purposes, an EEA national who has resided in the United Kingdom in accordance with the EEA Regulations for a continuous period of five years. An EEA national is entitled to an initial period of residence in the United Kingdom for a period of three months under Regulation 13 of the EEA Regulations and thereafter, under Regulation 14, is entitled to reside here for as long as they remain a qualified person (as defined in Regulation 6).

*Explanation for the refusal*

6. The Respondent served the Appellant with a notice of liability to deportation under the EEA Regulations on 20 April 2018 following her convictions on 29 September 2017 for conspiracy to act to facilitate the commission of a breach of UK immigration law by a non-EU person and on 16 October 2017 for conspiracy to act to facilitate the commission of a breach of UK immigration law by a non-EU person. The Appellant was sentenced on 3 November 2019 to seven years' imprisonment for the first conspiracy, with a further five years' imprisonment for the use or possession of criminal property and six years' imprisonment for the second conspiracy; all to run concurrently.

7. The Respondent decided to make a deportation order on 17 May 2019 on the basis that the Appellant had committed serious criminal offences in the United Kingdom with a real risk that she may re-offend in the future. The Appellant had not made any representations against her deportation and overall the Respondent considered that the Appellant posed a genuine, present and sufficiently serious threat to one of the fundamental interests of society and that her deportation was justified on the grounds of public policy in accordance with regulation 23(6)(b) and overall the decision to deport was proportionate.

8. The Appellant appealed against the decision on 31 May 2019, which included details of the Appellant's relationship with her partner and daughter; pursuant to which the Respondent sought further information which was provided. As a result, the

Respondent issued a supplementary decision letter dated 7 August 2019 which maintained the decision to deport but with much more detailed reasons. First, the Respondent considered the Appellant's claimed period of residence from 2004. There was no evidence of when the Appellant arrived in the United Kingdom and the documentary evidence she provided was dated between 2017 and 2019. The Respondent sought further information from HMRC as to employment, which showed total income, primarily from Southampton PCT, as well as with Best Connection Group and Simple Recruitment services as follows:

2006/07 – Southampton PCT £4423.66
2007/08 – Southampton PCT £3105.94
2008/09 – Southampton PCT £1593.33
2009/10 – Southampton PCT £1100.03
2010/11 – Southampton PCT £124.63
2011/12 – Best Connection Group £796.02
2012/13 – Simple Recruitment Services - £153.52
2013/14 - £0
2014/15 onwards – no employment recorded.

9. The Respondent did not accept that the earnings were genuine and effective to reflect a whole year's continuous employment such that it was not accepted that the Appellant had established that she had a sufficient employment history for exercising treaty rights in the United Kingdom for a continuous five-year period and it was noted that the Appellant was involved in criminal activity between 2009 and 2016. The Appellant had not acquired permanent residence. Further, the Respondent did not accept that the Appellant has been continuously resident in the United Kingdom exercising treaty rights for a continuous ten year period. As such, the Appellant was entitled only to the basic level of protection on public policy or public security grounds under the EEA Regulations.

10. In assessing the level of risk, the Respondent referred to the Appellant's criminal offending, impact on the wider community, the sentencing remarks and the OASys assessment. The overall assessment of the Appellant posing a low risk of reoffending was however considered to be in conflict with the written comments in the report, including the Appellant's denial of any involvement in the first conspiracy and was yet to accept responsibility for her actions; that the offences were financially motivated; that any further offending from similar offences would cause serious harm and that the Appellant has refused to engage in work relating to her past behaviour (with no evidence of any courses being undertaken in custody). The Respondent considered that there was no evidence that the Appellant has distanced herself from her criminal associates or that she would be able to support herself financially on release and had previously used a number of alias names and dates of birth. Overall, the Respondent decided that the Appellant had a propensity to re-offend and posed a genuine, present and sufficiently serious threat to the public to justify deportation on the grounds of public policy.

11. The Appellant's circumstances were considered, including that she was in good health, had some employment and relationships in the United Kingdom, spoke

Polish, had spent the majority of her life in Poland and would be able to seek employment and reintegration there. There was a lack of evidence of rehabilitation in the United Kingdom and no reason why work in this area could not be undertaken in Poland. The Appellant's deportation was considered to be proportionate.

12. The Respondent gave separate consideration to the Appellant's right to respect for private and family life under Article 8 of the European Convention on Human Rights, finding that she did not meet any of the exceptions to deportation in paragraphs 399 and following of the Immigration Rules and there were no very compelling circumstances to outweigh the public interest in deportation.

*The appeal*

13. The Appellant appeals, in summary, on the basis that she is entitled to a level of enhanced protection against deportation on the basis that she has acquired a permanent right of residence in the United Kingdom and further that she has more than ten years' continuous residence; that she does not pose a genuine, present and sufficiently serious threat to one of the fundamental interests of society and overall her deportation is not proportionate. Further, in the alternative the Appellant appeals on the basis that her deportation would be in breach of her right to respect for private and family life under Article 8 of the European Convention on Human Rights.

*The Appellant's evidence*

14. In her written statement signed and dated 5 November 2019, the Appellant states that she came to the United Kingdom in 2004 to work and study, with her first job as a receptionist in a casino and after that she worked as an interpreter on an employed and then self-employed basis. She states that at all times in the United Kingdom she has been working or job-seeking other than her period of maternity leave. The Appellant is unable to recall the exact dates of her employment, but worked as an interpreter in the NHS between 2006 and 2010, with Access to Communication and Wessex Translation. Her translation work varied, with some weeks working every day and other weeks the Appellant was not needed at all. Other than periods of illness, she never went more than a few days without a shift.

15. The Appellant states that she has lived in the United Kingdom for 15 years and has no remaining ties to Poland, with no friends of family there and her whole life is based in the United Kingdom, including with her partner and daughter (born in September 2015).

16. In relation to the Appellant's offending, she states that she became involved in sham marriages when she was young and single and didn't think about the consequences and only understood what she had become involved in through a client who she interpreted for when the police intervened. The Appellant had not been involved in any criminal activity for some time before she started her relationship with her partner.

17. The Appellant describes difficulties with her partner as new parents and at a stressful time leading up to her criminal trial; which involved a volatile situation where they both lost control. The worst incident involved the Appellant stabbing her partner without even realising what had happened and she can not imagine how they got into that position. As a result, social services became involved, the Appellant's daughter was placed on the child protection register and home assessments were made weekly. The Appellant believes that social services did not take a balanced view of the case, having already been involved on a previous occasion of domestic violence when the Appellant's partner restrained her on the sofa during an argument and the police were called; but no further action was taken then. The Appellant felt threatened by one social worker and made a complaint. It is not true that she refused to engage with any anger management course, just that it was not practical for her and her partner to do it at the same time for childcare reasons and before the Appellant was able to obtain a date for her to do the course, she was sentenced for her criminal offences. In prison she has undertaken anger management and other courses to address what happened and prevent it happening again.

18. The Appellant has maintained regular contact with her daughter during her imprisonment, with her partner becoming her daughter's primary carer (for which he has had to give up work and now suffers from depression) with assistance from the Appellant's mother. The Appellant describes the difficulties of separation for all of them, both everyday and on special occasions.

19. The Appellant anticipates that leaving custody will be hard, with anxiety and stress and does not think that she could manage on top of that if she is deported to Poland and separated from her family. The Appellant's partner does not speak Polish and would have little if any job prospects in Poland, he is settled in the United Kingdom and has family here. There is no support network available to the Appellant on return to Poland, so she does not know how she would support herself, find employment or accommodation. The Appellant's partner and daughter would not be able to afford regular visits to Poland and indirect contact is not the same.

20. The Appellant states she is a different person to when she committed her offences, with her thinking and perception having changed, with her priority being a mother and her relationship is also now completely different with both parties having the skills now to deal with each other in a different way and without reacting badly or risking their daughter seeing any further incidents between them. The family continued to live together after the most serious incident for a year before the Appellant was sentenced and there were no further incidents. The Appellant intends to return to the family home on release from prison.

21. In prison the Appellant has completed a number of courses including level 2 beauty, business enterprise level 2 (currently working on level 3) and has started an Open University course in criminology and psychology. She intends to find employment on release and would like to work in the housing industry or administration and does not think it would be a good idea to return to interpreting.

22. At the oral hearing, the Appellant confirmed her details, adopted her written statement and gave oral evidence in English. The Appellant gave an update as to recent circumstances for her and in particular the impact of Covid-19 on life in prison and on the lack of physical visits, as well as causing a delay to her application to study the second year of her criminology course. The Appellant has been appointed as a peer mentor to emotionally support vulnerable women, help new arrivals in prison, help with reading and writing, reporting bullying or harassment and as part of her role has a weekly meeting with the prison governor. The Appellant also stated that she had applied for a position with the City of London as a social worker, for which she was accepted but which she has not been able to commence because of Covid-19. Following her release from prison she states that a job is waiting for her doing this (albeit there is no documentary evidence of this).

23. In cross-examination, the Appellant confirmed that she had no remaining connections with anyone or anything in Poland and had not made any attempts to search for connections which had been lost. Her mother had one brother who passed away 15 to 20 years ago who had never married. She doesn't know very much about her father's side of the family. Mr Lindsay suggested that this was not credible but the Appellant said that she only spoke from the heart and did not intend to mislead. When asked about her criminal trial in that respect, she stated that she had learned from her mistakes and it was not her intention to mislead. She stated that at the time of her offending, she felt young, inexperienced and naïve and the offences were about a lack of maturity rather than her age.

24. The Appellant could not remember exactly when her relationship started, at some point between 2014 and 2015 and she was not involved in any criminal activity for a long time before the start of her relationship. When referred to her conviction for crimes continuing up until 2016, the Appellant stated that she could not remember the exact dates, there were efforts to trace a conspiracy over a long period of time and involving other people but she had not been involved after her relationship had started. The Appellant stated that she regrets her offending, does not deny it and has learned from her mistakes. It was not her intention to commit crime at the time and she did not consider the consequences of her actions.

25. The Appellant has been in prison for some time and has no connections in Poland, such that she cannot work or support herself. She states that her Polish is not as good as it was before she hasn't spoken it for a long time. She accepted that she had worked as an interpreter but could remember for how long, that she has lost fluency and her interpreting role was mainly on technical terms for medical appointments rather than conversational. The Appellant does not know whether she would have any access to services employment in Poland as she has not been there for a long time. The Appellant's partner and daughter have never been to Poland, she doesn't know the job market there and she will also need to adjust on release from prison. The couple don't know what they would do if the Appellant was deported and they had not thought of a scenario of them remaining in the United Kingdom with her in Poland, the Appellant stated that she didn't see why she shouldn't have a chance to be in the United Kingdom with her daughter.

26. As to employment in the United Kingdom, the Appellant could not remember her highest earnings, stated that it was only suspicion that she worked for short periods and overall stated that she has had enough time to think about the past and only wants to think of the future without reflecting on what has already gone. The Appellant again said that when she offended she had no family and no child, her priorities are different now, she has learned from her mistakes and would not jeopardise her daughter.

27. I asked the Appellant's supplementary questions. The Appellant could not remember when she arrived in the United Kingdom other than it was in 2004, maybe May. She worked as an interpreter but could not remember her working pattern, with some weeks being full-time and some months full-time. The Appellant could not remember when she last worked other than it was sometime between 2014 and 2016.

28. I asked the Appellant what it was that made her stop offending. She stated that previously she only had herself to worry about and once you have a partner there was a different priority. Previously she had less worries and less responsibility. The offending stopped when she changed her mind set, referring to considering the consequences and what you are doing more when you meet a person that you love. The Appellant stated that she stopped offending after her relationship started but before her daughter was born. As a new parent in prison the Appellant has undertaken a life skills course, which covers parenting, as well as others. This included the enough is enough course. There is no ongoing contact with social services.

*The Appellant's partner's evidence*

29. In his written statement signed and dated 7 November 2019, the Appellant's partner stated that he met the Appellant in early 2014 and they started dating in March that year. The Appellant was working full-time as an interpreter at that time. In July 2014, the Appellant told her partner that she was being investigated for sham marriages and assured him that she had nothing to do with anything like that anymore.

30. The Appellant and her partner moved in together in June/July 2015 and their daughter was born in September 2015. After that and with the stress of the criminal proceedings, the relationship suffered and became volatile with more arguments. During one argument, the Appellant's partner thought she was going to hit him, he went to restrain her and dropped her onto the sofa. Neither intended to be violent but read each other wrong in the heat of the moment and the police were called. After that they learned to control their responses and if things escalated, the Appellant's partner would leave and spend the night elsewhere. The Appellant's partner had a difficult relationship with her mother who lived with them and on two or three occasions she called the police accusing him of attacking the Appellant and locking her in a room and other lies.

31. On one occasion, the Appellant's partner heard shouting and saw the Appellant being attacked by her mother (with their daughter in the room), so he pulled her free and was then attacked by the Appellant's mother, who he removed from the house.

The police were called again who told the adults to be cautious given there was a young child at the property.

32. The Appellant and her partner moved to a new property in November 2016, following which there was a significant argument as the Appellant would not let her partner in the property and when he went to give his daughter a kiss and a cuddle, he thought the Appellant had thumped him on the back of the shoulder. Only afterwards did he realise that he had been stabbed, although she did not realise that is what she had done. This incident is described as a turning point in the relationship with agreement to change so this would never happen again. The couple decided to stay together make major changes to deal with tensions between them.

33. As in the Appellant's written statement, her partner describes involvement with social services, him undertaking a parenting course and the Appellant simply not being able to do so before she was imprisoned.

34. The Appellant's partner made peace with the Appellant's mother and they have supported his daughter since.

35. The Appellant's partner describes his daughter being distressed when the Appellant was imprisoned, initial difficulties with contact with her in prison and then regular visits and contact when permitted. The Appellant's partner describes his life being turned upside down and the lack of support from the Appellant, together with him needing to cease employment for childcare and because of adverse effects on his own mental health. He is suffering from depression and has been prescribed medication for this.

36. The Appellant's partner was born in the United Kingdom, all of his family are here, including his father, brother and two sisters, living locally and with whom he has regular contact. The Appellant's partner also has two older daughters and a granddaughter (who attends the same nursery as the Appellant's daughter). The Appellant's partner would not be able to relocate to Poland, away from his family, where he would be isolated and where he doesn't speak the language (which he doesn't know if he could now learn) and where he would be unable to find employment. If the Appellant were returned to Poland, her partner would not financially be able to keep up regular visits to see her.

37. The Appellant's partner is confident that the Appellant would not commit any further offences, stating that what she did was years ago, in completely different circumstances when she wasn't in a relationship and didn't have a child. He says it is not an excuse but at that time she had nothing to lose and hadn't thought through the consequences of what she was doing.

38. The Appellant's partner attended the oral hearing, confirmed his details, adopted his written statement and gave oral evidence in English. He also described the additional difficulties of maintaining contact with the Appellant during Covid-19, with his daughter not being able to understand why they couldn't see the Appellant. The Appellant's daughter has settled into school well this year, making friends but wants her mum to be involved. The Appellant's partner has started work again.

39. In cross examination, the Appellant's partner stated that he did not know what he and his daughter would do if the Appellant is deported to Poland because he does not understand what the situation there would be, whether there would be access to employment and education and where they would be removed from friends and family in the United Kingdom. The Appellant's partner stated that he was old enough to be able to get on with it and adapt, but it would be difficult for his daughter to be taken away from everything that she knows. He has not considered whether there would be any immigration difficulties in relocation.

40. I asked the Appellant's partner supplementary questions. He stated that he met the Appellant around July 2014 and knew of the criminal offences after the Appellant had had a visit from the Home Office and she told him about it. The Appellant's partner knew about her involvement in the past, but she had stopped offending probably a year or two before they were together and before she was pregnant. He believes that this was because the Appellant wanted to settle down and have a child. The Appellant's partner stated that the last contact the family had with social services was about three years ago, not long after the Appellant was imprisoned.

41. In re-examination the Appellant's partner stated that they had complied with social services requests, had already undertaken a parenting course and made significant improvements in the relationship even before the Appellant was imprisoned.

*Other written evidence*

42. The Appellant's mother made a written statement, signed and dated 7 November 2019. She states that she has lived in the United Kingdom since 16 April 2004 and since arrival has worked until she retired in March 2015. The Appellant and her daughter are the only family that she has in the United Kingdom and as she is progressively suffering from ill health, she is hoping that the Appellant will be able to support her on her release from prison. The Appellant's mother has been actively involved in the upbringing of her granddaughter and she is concerned that if the Appellant is deported, it is her granddaughter who will be punished most.

43. The Appellant relies upon a Family Impact Assessment from Laurence Chester, a qualified Social Worker dated 13 October 2019. The report was prepared following a visit with the Appellant, her partner and their daughter at the prison and by reference to relevant written materials. In relation to domestic violence, the report refers to both adults saying that they have completed parenting courses, understand how children can be hurt by domestic violence and that they are sure it would not happen again. In relation to the Appellant's criminal offending, it is recorded that the Appellant said it was the biggest mistake of her life and that she had already changed by the time her daughter was born.

44. The report records both adults suffering from mental health problems and difficulties caused by the separation from imprisonment.

45. The Social Work report finds that this is a loving close-knit family, with the impact of the Appellant's imprisonment mitigated by the support of the wider family and that if the Appellant were deported, her daughter is likely to experience even more

significant emotional distress due to a significant sense of loss. Evidence is referred to as to the adverse impact on a child of separation from a parent, with significant emotional developmental harm. The author notes that it would also be emotionally harmful to remove the child to live in Poland with her family given the separation from her wider family and given that the Appellant's partner has no knowledge of life in Poland and no means of support, it was reasonable to be concerned that the family would face a life of destitution, with no social family connections and no access to financial support or housing from the state.

46. In conclusion, the author considers that the Appellant's deportation would be unduly harsh on both her and her daughter, with a profound adverse impact on the child's emotional well-being; together with the concern about further deterioration of the mental health of the adults. There are concerns as to access to education, healthcare and public services for the Appellant's partner and daughter in Poland, which would represent significant obstacles to the family being able to establish a life there. There is further reference to domestic abuse and the adults presenting as sincere in their commitment never to subject their daughter to the impact of witnessing domestic abuse again.

47. The Appellant's bundle includes a letter from Choice for Change dated 28 May 2019, confirming that the Appellant has attended 25 counselling sessions between July 2018 and January 2019 during which she processed separation and related issues about her relationship with her partner, understanding parenting and learned to be more reflective about her responses and accepted challenges to her established thinking patterns.

48. The Appellant's bundle contains a number of documents about education, courses and employment, before and during the Appellant's imprisonment. At the hearing the Appellant also handed in two documents from prison, including a certificate of achievement and details as a mentor. I have taken all of these into account in my decision, returning below more detail to the evidence of employment that is available.

*Closing submissions*

49. On behalf of the Respondent, Mr Lindsay relied on the two reasons for refusal letters, subject to accepting that if it was found that the Appellant had acquired permanent residence and also had 10 years residence in the United Kingdom, that imperative grounds of public policy or public security could not be met on the facts of this case. However, it was submitted that the Appellant has not established that she had acquired permanent residence or completed 10 years residence in accordance with the EEA Regulations.

50. The evidence before the Upper Tribunal does not demonstrate that the Appellant has 5 years of continuous residence in the United Kingdom exercising treaty rights here. The evidence that is available from HMRC shows only that she has worked for at least some part of the years that she has spent in the United Kingdom. The highest

earnings recorded when the year 2006/07 which totalled £4423.66, a figure low enough that they may have only been accrued for a short period of work. The Appellant's lowest earnings were in 2011/12, there are no details of start and end dates of employment and whether or not employment was part-time or full-time. Given the low level of earnings in multiple years, the Tribunal cannot be confident that the Appellant was in genuine and effective employment during this period. It was submitted overall, that the burden is on the Appellant to establish continuous employment and she has simply failed to do so on the documentary evidence and her oral evidence was unclear, only referring to not wanting to dwell on the past.

51. In the absence of establishing permanent residence, the Appellant also cannot show 10 years continuous residence in the United Kingdom because permanent residence is a prerequisite for this. The Respondent also questioned the Appellant's social and cultural integration into the United Kingdom in any event given the nature, extent and duration of her criminal offending which would not meet this threshold.

52. In the circumstances, the Respondent submitted that the Appellant was entitled only to the lowest level of protection under the EEA Regulations, that of public policy or public security.

53. Mr Lindsay submitted that the Appellant was not a credible witness. She was someone who had a long and significant history of dishonesty on immigration matters and had committed significant criminal offences. There was a long course of offending, with two separate conspiracies running between 2009 and 2016, a seven year period of criminality. The Appellant went through her first trial protesting her innocence and even during her OASys assessment in 2018, sought to deny and/or minimise responsibility for her criminal offending. That approach has been maintained even in evidence before the Upper Tribunal.

54. The Appellant stated in her written statement that she was not involved in criminal activity for some time before her relationship started; which was clearly not true and she changed her evidence on this point in response to questions.

55. The Respondent does not take any issue with the Appellant's partner's credibility, the submissions focusing only on the Appellant.

56. As to whether the Appellant poses a threat to the fundamental interests of society and the United Kingdom, it is noted that in the sentencing remarks, the Appellant's offending struck at the heart of the immigration system. The Respondent submits that the risk of reoffending is higher than the conclusion suggests in the OASys report, which is based on statistical calculations and static factors, without considering that the Appellant committed the crimes for financial gain and where there was no evidence of any improved financial security on release to reduce the risk of reoffending for the same reasons. It was also submitted that even a low risk of reoffending had to be balanced against the nature of the offending and the very serious risk of harm if a further similar offence was committed. An additional matter not relevant to the statistical assessment is also the reference to previous incidents of domestic violence, which would also be a criminal matter even in the absence of charge or conviction. Mr Lindsay submitted that notwithstanding the courses

undertaken by the Appellant in prison, there are real reasons for concern that the risk of reoffending was at least as high, if not higher than set out in the OASys report.

57. As to the final proportionality assessment, there has to be a balance between the circumstances of the Appellant and her family as against the level of seriousness of the threat of reoffending and in this case it is sufficiently high to outweigh the family's interests.

58. The social work report sets out the likely adverse impact on a child, which is sadly the normal consequences of deportation and in this case it is open to the family to choose whether to remain in the United Kingdom without the Appellant or relocate to Poland. There is no reason why the Appellant cannot work and support visits there and no immigration difficulties have been identified for the family to relocate to Poland. The burden is on the Appellant to prove the assertions that there would not be adequate access to employment, healthcare or education for any of the family, but there is a lack of evidence of any such difficulties and the Social Worker is not qualified to comment on likely conditions on return to Poland. It was submitted that the Appellant has not seriously turned her mind what would happen return to Poland which undermines the bare assertions that she has made about what would happen on return. Aspects of the Social Work report do not reflect reality, in part been based on assumptions that a young child with primary attachments could not reasonably locate to another country where this case the family has a choice.

59. In relation to domestic violence, the Social Worker states that he found that the adults were sincere, but appears to accept what he has been told uncritically, without reference to any the documents, without reference to the Appellant's history of dishonesty and without any further questions being asked. There is no apparent resolution of the conflict in the evidence.

60. The Social Worker also strays outside of his role and competence by concluding that the impact of deportation would be unduly harsh on family members, which for present purposes is a legal test.

61. In conclusion, the Respondent submits that the appeal should be dismissed under the EEA Regulations. Finally, the Appellant has not directly relied on Article 8 of the European Convention on Human Rights in the alternative but in any event it was submitted that it would not be unduly harsh on the Appellant's partner or daughter either to relocate to Poland or to remain in the United Kingdom without the Appellant. Given the Appellant's length of sentence, she would in any event need to show very compelling circumstances over and above the exceptions to deportation to outweigh the significant public interest in her deportation. The same submissions as has previously been made were relied upon, that there were no very compelling circumstances given the strength of public interest in this case and a legitimate aim which goes beyond reoffending but also clearly includes the maintenance of effective immigration controls.

62. On behalf of the Appellant, Ms Reid relied on her skeleton argument and reiterated the primary submission that the appellant had acquired not only permanent residence but also 10 years continuous lawful residence in the United Kingdom and

in those circumstances it was accepted that there was insufficient justification for deportation imperative public policy or public security grounds.

63. The Appellant relied on the documentary evidence of her work and residence in the United Kingdom, with the documents painting a picture not of sporadic bookings as an interpreter but a person whose working days fluctuated with a different level of bookings. The Appellant has accepted that this employment was not sustainable in the long term and has taken steps to look for different employment in the future. However, her work as an interpreter was genuine and effective employment, with fluctuating work and some health problems with periods where the Appellant was unable to work for this reason.

64. The Appellant's first employment was from 17 September 2004 in a casino and five years from that date takes her to September 2009. It is accepted that there were no P60 documents past the year ending April 2009 but the HMRC records show some employment in the tax years 2009/10 and 2010/11, albeit the latter at a very low level. It was submitted that even low levels of earnings can still however be genuine and effective employment. It was accepted on behalf of the Appellant that there was only limited documentary evidence of employment available.

65. Ms Reid submitted that even if the Appellant had not established permanent residence or 10 years continuous lawful residence and was only entitled to the basic level of protection, the Respondent has not shown that her deportation would be justified in particular, it has not been established that the Appellant's conduct represents a genuine, present and sufficiently serious threat to public security. The Appellant has acknowledged that she has made significant past mistakes, but in reality all of her criminality has been around one aspect and there has been no further offending. The OASys assessment is that the Appellant is a low risk of reoffending and a low risk of serious harm and the Appellant has taken steps to improve her qualifications and employment prospects and therefore her financial circumstances on release from prison. Specifically, the Appellant has started a degree course with the Open University, she has been given a position of responsibility in prison and has given oral evidence about employment prospects as a social worker on release. The Appellant's partner is supportive of her, is in employment and can support the family. In addition, there is compelling evidence of the effect on the Appellant of responsibility for her daughter, a significant factor against reoffending. There is documentary evidence of courses undertaken in prison, including counselling to address the Appellant's behaviours and to lead to improvements in her relationship.

66. The Appellant and her partner have both given written and oral evidence about following advice, engaging with social services and reducing the risk of any further domestic violence incidents. The OASys assessment that the Appellant poses a medium risk of harm to a known adult and a known child should be seen in that context.

67. The Appellant relies on the Social Work report on the adverse impact on the Appellant's daughter if she were to be deported to Poland, with particular reference to the evidence of wider family relationships in the United Kingdom and the

establishment of their daughter here. In all the circumstances it is submitted that given the nature of offending and the family circumstances and United Kingdom, deportation is not proportionate.

68. In essence, the same points are relied upon in relation to Article 8 of the European Convention Human Rights, albeit it is accepted that the EEA Regulations offer a high level of protection than these provisions.

**Findings and reasons**

*Level of protection under the EEA Regulations*

69. The first issue to determine is what level of protection the Appellant benefits from, determined by whether she has acquired permanent residence in the United Kingdom by five years' continuous residence in accordance with the EEA Regulations, and if so, whether in addition she has resided in the United Kingdom for a continuous period in excess of 10 years.

70. As acknowledged on behalf of the Appellant by Ms Reid, there is limited documentary evidence as to the Appellant's employment in the United Kingdom (and no schedule of this was produced which would have been helpful) and this lack of evidence is not assisted by any written or oral evidence by the Appellant who claims to have little recollection of dates or specific information and when asked specifically about straightforward employment matters, repeatedly stated that she did not wish to dwell on the past and only looked to the future. The Appellant's evidence even on this factual matter was vague, lacking in any useful detail and was far from comprehensive, amounting in places to little more than bare assertion. The burden is on the Appellant to establish she has acquired permanent residence, and if so, 10 years continuous residence. For the reasons set out below, I do not find that she has discharged this burden to establish even permanent residence.

71. There is no evidence before the Tribunal of when the Appellant came to the United Kingdom other than her statement that it was sometime in 2004. There is no evidence of any study at anytime prior to her imprisonment and no specific evidence of any job-seeking; although there is documentary evidence of an amount of £471.26 of jobseekers allowance for the period to 31 May 2007 and an unknown amount in a period to 13 June 2008; both of which are inconsistent with the Appellant's claim in her written statement to have been continuously employed since her arrival.

72. The Appellant's claim is that she has been continuously employed in genuine and effective employment since arrival in the United Kingdom, save for short, unspecified periods of ill-health and her period of maternity leave (the dates for which have not been given but it can be inferred that this was likely to be from mid to late 2015 and into 2016 given her daughter was born in September 2015). The Appellant states that she never went more than a few days without a shift. As confirmed at the oral hearing, the specific period relied upon was five years from September 2004 (first employment) to September 2009 and no other different period was specified by the Appellant as one in which she claimed five years' continuous residence in accordance with the EEA Regulations.

73. The first evidence of the Appellant being in the United Kingdom and in employment is a contract of employment with Stanley Casinos Ltd dated 17 September 2004, with a leaving date of 7 November 2004 (shown from the P45) and from the Appellant's tax calculation for the year 2004/05, her total earnings were £1676 from this employment. There is no evidence of any employment or other activity as a qualified person from 8 November 2004 to June 2005 and the documents available relating to the tax year 2004/05 shows that the employment at the casino was the only employment during this period.

74. The next evidence of employment is a contract of employment with Southampton City PCT showing a start-date for part-time employment (with reference to the bank system rather than any specific hours or number of hours) of 10 June 2005 (although a separate letter confirms employment with Access to Communication from 2 June 2005). There are various references of employment with Access to Communication, Wessex Translation and Southampton PCT which all appear to refer to the same work as an interpreter mainly in the NHS, with Access to Communication being referred to as a department within Southampton PCT on the payslips. The Appellant states that this employment was between 2006 and 2010, initially as a PAYE employee and later on a self-employed basis (although the specific periods in each capacity has not been stated). There are a number of interpreter booking forms on various dates in 2006 and 2 bookings in May 2007 as supporting evidence of this employment and some blank travel claim forms from 2007.

75. The Appellant's P60's have been submitted for the tax years 2005/06, 2006/07, 2007/08 and 2008/09 which show earnings from Southampton City PCT consistent with the amounts set out by the Respondent in the reasons for refusal letter (and set out in paragraph 8 above). In addition, payslips have been provided for various amounts ranging from £5.75 to £441.58 for months between September 2005 and September 2009; albeit some dates and amounts have been omitted from copies provided. The monthly payslips that are available and on which a date can be identified show earnings as follows:

| | |
|---|---|
| 30 September 2005 | Amount paid omitted from copy |
| 31 October 2005 | £192.43 |
| 30 November 2005 | Amount paid omitted from copy |
| 31 May 2006 | £207.84 |
| 30 June 2006 | £440.60 |
| 31 July 2006 | £353.52 |
| 30 November 2006 | £282.69 |
| 31 December 2006 | £33.65 |
| 31 January 2007 | £42.59 |

| | |
|---|---|
| 28 February 2007 | £220.66 |
| 31 March 2007 | £188.35 |
| 30 April 2007 | £349.03 |
| 31 May 2007 | £260.01 |
| 8 June 2007 | Amount unknown |
| 31 July 2007 | £42.59 |
| 1 August 2007 | £188.35 |
| 30 September 2007 | £201.84 |
| 31 October 2007 | £189.08 |
| 30 November 2007 | £365.67 |
| 31 December 2007 | £154.78 |
| 31 January 2008 | £204.82 |
| 29 February 2008 | £441.58 |
| 31 March 2008 | £359.51 |
| 30 April 2008 | £364.30 |
| 31 July 2008 | £151.60 |
| 31 August 2008 | £231.05 |
| 30 June 2009 | £73.74 |
| 31 July 2009 | £113.86 |
| 31 August 2009 | £79.80 |
| 30 September 2009 | £5.75 |

76. The Appellant has not given any evidence on whether payslips are missing because they are unavailable or whether the missing payslips are because there were no earnings in those months. It seems from the HMRC records at least in the earlier years that at least some payslips are simply missing. There are significant gaps in the payslip evidence between the end of 2005 and April 2006; August to October 2006; May/June 2008; and then between September 2008 and May 2009; with only very low earnings from June to September 2009. The payslips that are available show that the Appellant was not working any set or regular number of hours as the level of remuneration differed significantly from month to month. The relatively low level of monthly earnings even in the highest paid months does not support the Appellant's evidence that some weeks and months she was working full-time.

77. The only other evidence available in relation to any income or earnings are bank statements for the Appellant dating from 2011 onwards which show receipt of state pension, pension credit, one payment of Employment and Support Allowance and earnings from Pro Force Kent Ltd (with a name as a reference which is not the Appellant's name or one of her known alias') and from Blue Arrow. Save for a P45 in 2012, there are no contracts of employment, payslips, P60's, or self-employment records or any other documentary evidence of work for this later period. The sentencing remarks for the Appellant do however show proceeds from her criminal offending of at least £29,000, although it is unclear from precisely what period, it is inferred that money was received from this from late 2009 onwards when the first conspiracy began.

78. On the basis of the evidence that is available, I find that the Appellant was employed on a full-time basis between September and November 2004 (her first employment with the casino) and irregularly, on a part-time (or bank/zero hours basis) as an interpreter from June 2005 and on the balance of probabilities up to April or at best August 2008. There is evidence of some earnings between June and September 2009 but only at a very low level, the last payslip being only for £5.75 for the month of September 2009. There is no evidence to establish any employment or other activity as a qualified person between early November 2004 and June 2005, or between September 2008 and May 2009.

79. The question for the purposes of establishing permanent residence is whether the Appellant was a qualified person (as defined in regulation 6 of the EEA Regulations) during this period such that she was residing in the United Kingdom in accordance with the EEA Regulations. The Appellant specifically relies on being a worker (as defined in regulation 4 of the EEA Regulations) and whilst there are limited references to studying and work-seeking, there is little if any evidence of the same and no specification of dates or the period in which the Appellant was said to be doing either.

80. In certain specified circumstances, set out in Regulation 6(2) of the EEA Regulations, a person who is no longer working must continue to be treated as a worker but there was no submission on behalf of the Appellant that she satisfied any of these requirements to cover the gaps in employment identified above. In relation in particular to the gap after 7 November 2004 to early June 2005; there is nothing in the evidence before me on which it could be found that the Appellant continued to be a worker during this period. There is no evidence, for example, of the Appellant being unable to work because of illness or accident; she had not previously been employed for at least a year and there is no evidence that she was recorded as unemployed to undertake vocational training or that she was actively seeking employment.

81. As to the later part of the five year period relied upon, the Respondent submitted that the Tribunal could not be confident given the low level of earnings that there was genuine and effective employment.

82. The concept of a worker is a broad one in community law, with the leading authorities on it being D M Levin v Staatsecretaris van Justititie, C-53/81 and Lawrie-Blum v Land Baden-Wurttemberg, C-66/85 (as relied upon in numerous cases since,

which are not all necessary to cite here). In summary, to be a worker, the person must perform services of some economic value to the employer; the services must be 'genuine and effective' and the services must be more than 'marginal or ancillary'. This can include part-time and low-paid work; and duration and regularity of work are relevant factors.

83. I have taken into account all of the evidence available as to the Appellant's economic activity within this broad concept; including in her favour that she had earnings from the same employer (whether as Southampton PCT or Access to Communication or Wessex Translations) between June 2005 and of September 2009 (albeit not on a continuous monthly basis and at varying levels); but also that these earnings were irregular, with no set hours or even number of hours and towards the end of the period, earnings were at very low levels indicating that the activity was marginal and ancillary rather than genuine and effective. There was no evidence at all as to the Appellant's actual working pattern (if any) or wider circumstances, particularly in the later years in this period as to how she was supporting herself on such low, limited and irregular income.

84. Whilst I find that the Appellant had periods of employment during this five year period from September 2004 to September 2009, I do not find that she has established continuous employment during this time given the significant gaps in the evidence, both documentary evidence and in the Appellant's own written and oral evidence. The gaps are either not explained at all or at best covered by reference to unspecified periods of illness or jobseeking (although the claims for JSA appear to overlap with periods of employment in any event).

85. The Appellant was asked specifically about her employment during the relevant period and I explained the relevance of such evidence to her claim to have acquired permanent residence but she was unable and/or unwilling to give any further details. Counsel on behalf of the Appellant went no further in submissions than to simply assert that there was a sufficient period of continuous employment which was genuine and effect and by reference to the documents listed in paragraph 14 of her skeleton argument (to which I have already referred to in detail above); whilst acknowledging the lack of documentary evidence and that these documents did not cover the entire period.

86. On the basis of the evidence set out above, I find that the Appellant was a worker and resided in the United Kingdom in accordance with the EEA Regulations from September to early November 2004 and then from June 2005 to April or at best August 2008. There is no evidence of any activity as a worker (or otherwise as a qualified person) after 7 November 2004 to early June 2005 (and nothing to suggest that she would continue to be treated as a worker during this time) and after, at the latest August 2008, there is no evidence of any earnings on any regular basis and/or above a very low level, such that I do not find that there was genuine and effective employment which was more than marginal or ancillary after this time. On these findings, the Appellant has not established a continuous period of five years living in the United Kingdom in accordance with the EEA Regulations, as a worker or otherwise as a qualified person.

87. As above, the Appellant relied on the initial five year period following her arrival in the United Kingdom/following her first employment in September 2004 for the purposes of establishing permanent residence and it was not suggested that any other five year period established this. In any event, the evidence of employment or any other activity for later years after September 2009 is even more sparse and could not on any view show continuous residence for a five year period in accordance with the EEA Regulations; particularly given that the Appellant was from late 2009 receiving substantial sums of money from criminal activity and it can be inferred was supporting herself primarily from these means. For these reasons, the Appellant has not established that she has acquired permanent residence in the United Kingdom under Regulation 15 of the EEA Regulations.

88. In the absence of establishing permanent residence, the Appellant can not establish ten years' continuous lawful residence in the United Kingdom in accordance with the EEA Regulations as this is a necessary pre-requisite. In any event, for the reasons already given the Appellant could not on the evidence establish this. In these circumstances, the Appellant is entitled only to the lowest level of protection against deportation in the EEA Regulations, that of public policy or public security.

*Present, genuine and sufficiently serious threat*

89. The Respondent can only deport the Appellant on the grounds of public policy or public security in accordance with Regulation 23 of the EEA Regulations. In accordance with those provisions set out above, I consider first the personal conduct of this Appellant and whether her personal conduct represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests in society. Although the Appellant's conviction or criminal history does not itself justify a decision to deport, that is an appropriate place to start.

90. The Appellant's criminal history is set out above, which included two separate conspiracies in relation to sham marriages, the first between 30 March 2011 and 13 February 2014 and the second between 5 November 2009 and 31 August 2016. The sentencing remarks in relation to both include the following:

> *"… As I have said and your counsel accept, these offences are very serious because they strike at the heart of our immigration system, our immigration controls, and you and Asante were both major players in the Ghanian conspiracy and you in the Asian conspiracy also.*
>
> *You both, you and Asante, made a lot of money out of it. The conspiracies were well organised, well planned, sophisticated and carried out, it would seem, purely for commercial gain and for that type of offence there has to be a significant deterrent element in the sentence. There are problems with immigration controls in many countries and we are no exception and they cause the public considerable concern, considerable and justifiable concern. …"*

91. The Appellant was sentenced to seven years' imprisonment for the first conspiracy, an additional five years' imprisonment related to the proceeds of crime from it; and six years' imprisonment for the second conspiracy; all to run concurrently. The

length of sentences imposed reflects the very serious nature of the offences and the sentencing remarks reiterate that the Appellant was part of two lengthy and well planned conspiracies with nothing to suggest that she played only a minor part in them, she was a major player.

92. An OASys assessment was completed on 27 March 2018 (although dated 2 July 2019, this appears to be the printing date and nothing has apparently been updated since the assessment was first completed). At the time of this assessment, the Appellant continued to deny any criminal activity or involvement in the conspiracy and maintained the defence that was previously rejected that she had documents in her possession only from working as a translator. The report also concludes that the Appellant does not recognise the impact and consequences of her offending on the individual victims or on wider society; although she does state that she would never commit crime again because of the negative impact it has had on her and her family. The were no specific issues identified as linked to offending.

93. Overall, the OASys report assesses the Appellant as posing a low risk of reoffending and a low risk of serious harm to the public in the community; with a medium risk of serious harm to children and a known adult. The latter is specifically by reference to domestic violence with her partner and the risk to her own child. The OASys assessment refers to child protection conference minutes dated 19 February 2018 (following a conference on 13 February 2018) detailing that there was previously a Child Protection Plan in place for the Appellant's daughter due to her being at risk of serious harm following incidents of domestic violence, including the Appellant stabbing her partner whilst he was holding their daughter. That was downgraded at this conference to the Appellant's daughter being a Child in Need because there were no immediate safeguarding concerns whilst the Appellant was in custody. The report however states that Childrens Services will need to reassess the situation prior to the Appellant's release from prison and the Social Worker is to notify them prior to the release date. It is recorded that the Appellant had refused to engage in any work with social services in relation to domestic violence and she did not wish to discuss any aspect of this with the author of the OASys report.

94. There are therefore two distinct potential risks from the Appellant which are identified in the OASys report and need to be considered. I deal first with the criminal offences committed and any risk of reoffending of that nature.

95. The Appellant has given very little evidence as to her criminal offending, in terms of what led to it or any detail of her involvement, with continuing denial of any wrongdoing as recently as early 2018. In her evidence before the Tribunal, she states that she acknowledges the offences and regrets them but gives little detail of this and no insight into the seriousness or impact of her offending.

96. The Appellant has repeatedly stated in evidence that at the time of offending she was young and/or immature, had no responsibility, was not in a relationship nor did she have a child and did not consider the consequences of her actions. The Appellant was however 29 years old when the offending began (and much older by the time it stopped 7 years later), had moved to the United Kingdom some five years previously

and been in employment here such that it is difficult to accept that she was simply young or immature as a reason for two lengthy, well planned criminal conspiracies.

97. In her written and oral evidence the Appellant initially stated that her criminal offending ceased a long time before her relationship started (in 2014 or 2015) and the only reason repeatedly given for not reoffending was that she now had a partner and a child, with responsibility and as such her outlook and priorities had changed. However, in oral evidence the Appellant stated that her offending stopped when she began her relationship but before her daughter was born. The Appellant's partner also stated that the Appellant had ceased criminal activity before their relationship started.

98. In addition to the difficulties with the inconsistent evidence of the witnesses on this point; all of their evidence was wholly inconsistent with the Appellant's conviction for the second conspiracy which was between 5 November 2009 and 31 August 2016; continuing not only long after the relationship started in 2014 but also for almost year after the Appellant's daughter was born in September 2015. I do not accept as credible the Appellant's evidence (or her partner's evidence) that criminal activity ceased before her relationship started and/or before her daughter was born as this is directly contrary to the facts of her conviction. For these reasons I also do not accept or attach any significant weight to the Appellant's evidence that she would not reoffend again because of her changed circumstances with her family as she continued to offend for a significant period even after the birth of her daughter. The Appellant relies on little else as a reason as to why she does not pose a risk of reoffending, although I take into account that she has undertaken further education to improve her employment prospects on release from custody and has undertaken some courses in prison (although these seem to be primarily focused on her family circumstances which I address below).

99. In relation to the assessment that the Appellant poses a medium risk of harm to her partner and her child, the evidence before the Tribunal on this is relatively sparse, as it was before the OASys report author. There is no evidence of any criminal charge or proceedings. There is no evidence at all from Social Services, nor any update to the position as recorded in the OASys assessment. The Appellant's partner's evidence was that there had been no further involvement with social services, the last involvement being about three years ago; but this is directly contrary to the record of a child protection conference taking place in February 2018 and a specific plan for reassessment of the situation prior to the Appellant's release. I am not satisfied that there is no ongoing social services involvement or at least planned assessment in the future, the latest evidence available before the Tribunal is that the Appellant's daughter is still classed as a Child in Need and further assessment is expected.

100. The Appellant and her partner both accept that there were incidents of domestic violence in the past and both claim to have undertaken work via specific courses and generally reflecting on their relationship to prevent this happening again in the future; about which there is some evidence of counselling at least. Neither the Appellant nor her partner address in any detail in their evidence the stabbing incident and there is no explanation as to why there were no criminal charges in

relation to this. It is also of concern that the evidence from the Appellant and her partner was that they did not now how the situation reached this point and the Appellant did not even realise she had stabbed her partner whilst he was holding their young daughter. Without identification of what actually happened or how, even now, it is difficult to find that even with some work and time for reflection the risk of a future similar incident has been significantly reduced and that appears to be the view of Childrens Services that further assessment will be required before release from custody.

101. The social work report refers to past domestic violence, but in no detail and with no assessment of future risk of this happening again and simply concludes, without reasons, that the Appellant and her partner are sincere when they say it won't happen again. I attach very little weight to this conclusion in the absence of any analysis of the history of events, cause, work undertaken to address them or any detailed assessment of future risk based on the same; and in light of the adverse credibility findings in relation to the Appellant's evidence.

102. Overall, I have no reason to depart from the OASys assessment that the Appellant poses a medium risk of serious harm to her partner and daughter and that the Appellant's daughter remains a Child in Need about whom there are continuing concerns from social services who intend to reassess the situation prior to the Appellant's release from custody; and I attach significant weight to it.

103. When assessing future risk, I have also taken into account paragraph 3 of Schedule 1 to the EEA Regulations as to the significant length of the Appellant's custodial sentence for two convictions (and the associated criminal property sentence) and paragraph 5 as to the lack of substantial evidence of not posing a threat. I also note that the Appellant's criminal offences are directly covered by paragraph 6 of Schedule 1 given that they are for conspiracy in relation to sham marriages to facilitate unlawful entry to and residence in the United Kingdom, which as in the sentencing remarks, which are of significant and particular concern.

104. For all these reasons, on both accounts, I find that the Appellant does pose a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society in the United Kingdom, specifically those set out in paragraph 7(a), (c), (e), (f), (g), and (i) of Schedule 1 to the EEA Regulations.

*Proportionality*

105. The final issue to consider under the EEA Regulations is whether the Appellant's deportation would be proportionate bearing in mind the specific factors set out above in Regulation 23 and Schedule 1 of the EEA Regulations. I find it is having considered the following matters and for the following reasons.

106. There is no dispute that the Appellant is in a genuine and subsisting relationship with her partner and their daughter, now aged five; both of whom are British citizens and who have their own wider family members in the United Kingdom. The Appellant's partner has continued to support the Appellant through her criminal proceedings, during custody and throughout these deportation proceedings. The

social work report also endorses the relationship between the family members and the regular contact with the Appellant in custody (albeit subject to recent restrictions caused by Covid-19).

107. Despite the risks posed to the Appellant's daughter by the Appellant set out above, I accept the evidence of the Appellant's partner as to the relationship and adverse impact on his daughter of the Appellant's imprisonment and the evidence in the social work report to the effect that the Appellant's daughter will be adversely affected if the Appellant were to be deported and she were to remain in the United Kingdom with her father; which even in light of the domestic violence issues and risk is in accordance with the evidence and general position that children are adversely affected by the deportation of a parent. It is suggested that in addition to the harm already caused by the imprisonment of her mother, the Appellant's daughter would experience even more significant emotional distress and a significant sense of loss if the Appellant were deported. The author refers to the adverse of impact from imprisonment being mitigated by support from her wider family in the United Kingdom, but no comment is made as to whether this would mitigate the impact of deportation in any way.

108. The social work report goes on to state that deportation would be unduly harsh whether or not the Appellant's partner and daughter stay in the United Kingdom or relocate to Poland which unnecessarily strays into the legal language of section 117C of the Nationality, Immigration and Asylum Act 2002 and is therefore of little assistance in this appeal, which is focused on the EEA Regulations and in the absence of the correct test being referred to for unduly harsh in any event.

109. Further, I do not accept or give any significant weight to the conclusions in the social work report as to the likely situation in Poland if the family relocated given that the social worker has no particular experience or expertise in country conditions in Poland and cites no sources or reasons for his conclusions that go so far as saying the family would face destitution there. There is simply no basis for this, even if it came from the interview with the Appellant and her partner and there is no evidence before the Tribunal to support such a conclusion.

110. It is usually the case that it is accepted to be in the best interests of a child to remain with both parents in the same country; albeit in this case the position is more complicated because of the risk to the Appellant's child posed by her own mother and detriment already caused to her by past domestic violence and imprisonment. The social work report offers little assistance by way of expert evidence to balance this given that it lacks any analysis of risk to the Appellant's daughter or of the issue of domestic violence. However, on balance, based on all the evidence in the round I accept in this case that it is in the Appellant's daughter's best interests to remain with both parents (albeit acknowledged that this is a matter which Childrens Services are to assess further) and in all the circumstances, on balance in her best interests to remain with them in the United Kingdom given her British citizenship and wider family relationships here. The Appellant's daughter is however in good health, not at a critical stage of education and relatively young such that there are no particular reasons why she could not adjust and integrate with the support of her mother, or

parents together in Poland. It would be a matter of choice for the family if the Appellant were to be deported as to whether they accompany her to Poland or not.

111. The Appellant is a 40 year old female who is in good health and who claims to have lived in the United Kingdom since 2004; having spent the first 24 years of her life in Poland. The Appellant speaks Polish which although she says is not as fluent as previously, it is notable that she worked for many years (even if irregularly) as a translator and I find that she remains fluent as well as being fluent in English. The Appellant has education and qualifications as well as work experience which would enable her to obtain employment and there is a lack of any evidence at all as to the current job market in Poland; nor in relation to access to accommodation, services or support there. On the evidence before me, there is nothing to suggest that the Appellant would not be able to re-establish herself in Poland, obtaining appropriate accommodation and employment and be able to reintegrate. As such, there is also nothing to suggest that she would not similarly be able to support her family in Poland, or support them and keep in contact with them (via modern means of communication as well as visits) in the United Kingdom from there.

112. I accept that it would be likely be difficult and disruptive for the Appellant's partner and daughter to relocate to Poland with her; with some language difficulties and adjustment required; but, similar to the Appellant, there is nothing in the evidence to suggest any immigration difficulties with relocation, or any difficulty for the family in obtaining accommodation, employment, education or other services in Poland.

113. The Appellant has undertaken some work towards rehabilitation in prison in the United Kingdom and there is nothing to suggest that the Appellant could not pursue any further rehabilitation work in Poland.

114. The Appellant's mother is in the United Kingdom and I accept that she has no contact with any other family in Poland. At least to some extent the Appellant is socially and culturally integrated in the United Kingdom given her length of residence and employment here, but against that must be balanced her criminal offending over a significant period of time between 2009 and 2016 and that she has been in prison since November 2017 which undermines her level of integration here.

115. In all of the circumstances, I find that the Respondent has established that there are grounds of public policy and security to justify the Appellant's deportation from the United Kingdom; which is a proportionate decision having taken into account the genuine and present risk she poses to the fundamental interests of society and to her own family; even taking into account her length of residence and family in the United Kingdom, including the best interests of her daughter. I dismiss the appeal under the EEA Regulations.

*Article 8 of the European Convention on Human Rights*

116. The Appellant relies in the alternative on her deportation being a breach of Article 8 of the European Convention on Human Rights, although no detailed submissions were made on this, by reference to section 117C of the Nationality, Immigration and Asylum Act 2002 or otherwise in light of the acceptance that the EEA Regulations

offer greater protection and therefore if the Appellant fails on that basis, she is not likely to succeed on human rights grounds.

117. The Appellant's length of sentence is such that it would only be if there are very compelling circumstances over and above the exceptions to deportation in section 117C of the Nationality, Immigration and Asylum Act 2002 that the very significant public interest in deportation could be outweighed. No further circumstances or matters have been identified in addition to those matters already identified above in the context of the EEA Regulations and I find that there are none. As accepted on behalf of the Appellant, having not succeeded in successfully challenging her deportation under the EEA Regulations, for essentially the same reasons, her deportation would not be a disproportionate interference with her right to respect for private and family life.

**Notice of Decision**

For the reasons given in the decision of UTJ Allen dated 7 February 2020, the making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it was necessary to set aside the decision.

The decision of the First-tier Tribunal is set aside and re-made as follows:

The appeal is dismissed under the Immigration (European Economic Area) Regulations 2006.

The appeal is dismissed on human rights grounds.

No anonymity direction is made.

Signed *G Jackson* Date 3rd December 2020

Upper Tribunal Judge Jackson