IAC-AH-SC-V2

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00659/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 10 September 2020	**On 23 September 2020**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

MR OLEGS LAZAREVS
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr O Richards, Stanley Richards Solicitors
For the Respondent: Ms S Cunha, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Latvia. He was born on 4 April 1997. On 5 October 2018, the Respondent made a deportation order against the Appellant pursuant to Regulation 23(6)(b) of the Immigration (European Economic Area) Regulations 2016 ("2016 Regulations"). The Appellant appealed against the decision. His appeal was dismissed by Judge of the First-tier Tribunal Carey in a decision dated 5 February 2020 following a hearing on 30 January 2020. Permission was granted by First-tier Tribunal Judge Grant-Hutchison on 13 March 2020. The matter came before the

Upper Tribunal, Upper Tribunal Judge Kebede on 16 July 2020 for an error of law hearing however there was no attendance by the Appellant either by way of Skype or telephone communication and no indication as to why he as not attending. Judge Kebede noted that he was no longer represented by Temple & Co Solicitors who had ceased acting for him. Judge Kebede adjourned the matter to give the Appellant a further opportunity to attend the hearing remotely and to call legal representation if possible. The matter came before me on 10 September 2020 by way of a remote hearing to determine whether Judge Carey made an error of law.

2. The Appellant came to the UK in 2004 when he was aged 7. On 25 November 2013 he was cautioned for possession of cannabis. On 18 July 2014 he was cautioned for theft of a bicycle. On 24 July 2014 he was cautioned for shoplifting. On 19 December 2017 at Norwich Crown Court he was convicted of three counts of burglary and breach of a conditional discharge. On 5 February 2018 at Norwich combined court he was sentenced to a total of 22 months' detention in a young offenders' institute and made subject to a criminal behaviour order for two years. He was ordered to pay a victim surcharge of £140.

3. The sentencing judge made the following remarks:-

> "… Offences of domestic burglary are always serious offences. They involve unauthorised entry into peoples' homes. They often, as in some cases – here is clear from the victim impact statements – have a very considerable effect on the people and the addresses burgled. These – this is not a case of one isolated burglary of a dwelling. Each of you appear to be sentenced in relation to three offences of burglaries of dwellings. In relation to you, Mr X, you also appear for sentence in relation to two offences of handling stolen goods; goods from burglary offences in which Mr Lazarevs was involved, but you were not.
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> So far as Mr Lazarevs is concerned, Mr Lazarevs also appears to be sentenced to a – for three offences of burglary. In relation to two of those counts, counts 5 and 6, they were burglaries which occurred at night; they were burglaries in which at the time, there were – the occupants were asleep in their bed. These – those are aggravating features.
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> These are also offences that must have had some planning. I take the view that bearing in mind the nature of the offences, the fact the number of offences, these are offences which substantially pass the custody threshold, and which only a custodial sentence can be appropriate. Again, in your case, I take into account your age, in particular do not differ, bearing in mind your both come here for these three offences. So far as those three offences are concerned – you've not been involved in anything else so far as sentence day is concerned – the sentence would have been one of 24 months. I reduce it to 21 months; 21 months in respect of each count and they will run concurrently.
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> However, these offences were committed within weeks of you appearing before the Magistrates' Court and have been given a 24 month conditional discharge in respect of an offence of shoplifting involving the theft of fragrances from Boots to a value of £368.50. The commission of these offences, i.e. the burglary offences, show a complete disregard for the sentence that you – for you – the sentence was given by the Magistrates in respect of that matter. I am going to deal with that

> today. You will be sentenced to one months' custody in respect of the breach of that conditional discharge, and that one month will be consecutive to the 21 months; a total sentence of 22 months …"

The Decision of the First-tier Tribunal

4. The Appellant attended the hearing and gave evidence in Russian through an interpreter. He relied on his witness statement and he was cross-examined by the Home Office Presenting Officer. He accepted that he had been convicted at Norfolk Magistrates' Court on 18 January 2019 for possessing a specified item in prison without authority on 28 May 2018 contrary to the Prison Act 1952. He also accepted that he failed to report to Immigration Enforcement in December 2019 and January 2020. The judge recorded that the Appellant was released from prison on 14 November 2018 on licence and that his licence was due to expire on 5 February 2020.

5. The judge had before him a witness statement from the Appellant's mother who did not attend the hearing. The Appellant stated that she was unwell. The judge had before an OASys assessment of 16 July 2018 and an Appellant's bundle consisting of 266 pages.

6. The Appellant's evidence in summary was that since his release from prison he had been employed for some of the time. He was living with his mother. He would not be able to manage should he return to Latvia. He does not know anything about the country and does not speak Latvian. He accepted the convictions as noted by the Respondent in respect of the three burglaries. He said that he had committed the offences because he was "young and really stupid". His evidence was that he realised that he needed to change.

7. The judge heard submissions from both representatives. Mr Richards, appearing on behalf of the Appellant submitted that the Appellant's mother had secured indefinite leave to remain which in his view confirmed her existing rights of residence. He submitted that his mother was a permanent resident and that the Appellant had been dependent on her since he was age 7.

8. The judge made a number of findings. He set out the background at paragraph 27 recording when the Appellant entered the UK with his mother and that she was issued with a registration certificate under the accession state worker registration scheme on 7 May 2004. This was withdrawn due to non-exercise of treaty rights on 8 March 2008. The judge recorded the Appellant's education here. He attended primary school and then secondary school. He obtained various qualifications. He joined the College of West Anglia and enrolled in a construction skills level 1 course. Having previous attended an engineering course at the same college the judge noted that the Appellant's offending had escalated culminating in a series of domestic burglaries. The judge, at paragraph 33, considered the relevant level of protection to which the Appellant is entitled, and he directed himself, with reference to BF (Portugal) [2009] EWCA Civ 923. He reminded himself that criminal convictions are never enough by themselves although they can be taken into account but only insofar as the circumstances which give rise to those convictions or evidence of personal

conduct constituting a present threat for the requirement of public policy. He reminded himself that the exclusion or deportation of an EEA national cannot be justified on the grounds of general deterrence and that there must be some indication that the offender will commit further offences or in some way infringe public security or policy.

9. The judge, at paragraph 40, recorded that the Respondent's case was that the Appellant was not entitled to permanent residence at the date of the decision. The Respondent's case was that the Appellant had failed to produce any evidence that during the time when he was in full-time education as a minor either his parents were exercising treaty rights during the necessary five year period or that he held comprehensive sickness insurance. The judge took into account a letter the Appellant produced from Job Centre Plus dated 12 May 2010 confirming that his mother received income support from 12 December 2005 until 12 May 2010. He also took into account a P60 for the Appellant's mother for the tax year 2014 – 2015. The judge said as follows:-

> "41. For some reason, the Appellant has not produced a clear chronology of his mother's employment history. He has produced some records from HMRC which show that his mother started work for Staffline Recruitment Limited on 30 January 2015 when the Appellant would have been age 17 and was no longer in education. She appears to have worked for Staffline until beginning of December 2015 when she then worked for Number Nil Limited until 15 January 2016. The records show that during the following year, she worked for Go West Travel Limited and Store Central Info Limited. None of that evidence suggests that the Appellant's mother was exercising treaty rights for any appreciable period when the Appellant was in full-time education or prior to the Respondent's decision of 5 October 2018 sufficient to entitle her son to recognition of a right of permanent residence. Under the Regulations the cut off age for treatment of a child as a family member is 21 not 18.
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> 42. In addition, I do not have a clear account of the Appellant's employment record prior to the date of the decision. Although he claims in his statement of October 2019 that he has worked in the United Kingdom and continues to be in employment, I do not have any reliable information about his employment prior to 5 October 2018. According to his P60 for the tax year 2016/2017, he only earnt £458 during that tax year. I have a letter from Staffline confirming that he was employed as a temporary worker during that year from 29 July to 28 September 2016. At best his employment prior to the decision to deport was sporadic.
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> …
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> 44. Direct family members have an automatic right of residence in the UK for as long as they remain the family member of that EEA national and that person is either entitled to reside in the UK for an initial period of three months or as a qualified person or has a right of permanent residence. It follows that in order to establish any right to reside in the United Kingdom as a direct family member an applicant such as the Appellant must provide proof that the EEA national on whom his status is based (Ms Jelena

Borescvska) was at the material time either living in the UK and exercising a free movement right or has a permanent right of residence in the UK.

45. The Appellant's mother was granted indefinite leave to remain under the EU settlement scheme on 10 April 2019. EU citizens are entitled to apply under the EU settlement scheme to continue living in the UK after 30 June 2021. Applicants are entitled to settled status if they started living in the UK by 31 December 2020 and have lived in the UK for a continuous five-year period. Successful applicants do not need to establish that all or indeed any part of that period was spent as a qualified person. Accordingly, the grant of indefinite leave to his mother does not assist the Appellant. Applicants can simply provide their national insurance number which allows an automated check of the Applicant's residence based on tax and certain benefit records. Those who have been to prison usually need five years' continuous residence from the day they were released to be considered for settled status under the scheme.

46. To achieve recognition of a right to permanent residence it is not necessary for the EEA national to have exercised treaty rights for a continuous period of five years providing he can show continuity of residence for that period. The five-year period may, however, be interrupted by gaps of no more than two year when Treaty rights were not being exercised. Accordingly, periods when the union citizen is working, etc. can be aggregated so as to build up to five years eventually – the Secretary of State for Work and Pensions and Dias (case C-325/09 (CJEU) Third Chamber). As long as the applicant has an aggregate of at least five years as a qualifying person, it does not matter that there are gaps. There has to be continuity of residence throughout but not necessarily in accordance with the Directive or as a qualified person – COB v SSWP [2007] UKUT 255.

47. I am not satisfied that at the date of the decision the Appellant was then entitled to permanent residence based either on his status as a family member and/or as a worker. He does not have a clear or comprehensive work history and there was no evidence that he would be able to qualify in some other way such as a family member of a qualified person. In their letter of 5 March 2018, Temple & Co suggested that the Appellant's mother had acquired permanent residence by 2009 but that cannot conceivably be right if his mother was in receipt of income support from 12 December 2005 until 12 May 2010 and had only been here since 2004. There is no evidence that during that period she was a jobseeker and had some prospect of obtaining employment. In her statement of 10 October there is little mention of her employment and benefit history."

10. The judge at paragraph 48 considered the judge's sentencing remarks. At paragraph 49 of the decision he considered the OASys assessment wherein the author had assessed the Appellant as being a medium risk to members of the public. The nature of the risk was said to be "threat and assault if challenged and psychological harm to victims of burglaries". The judge recorded that the risk was said to be the greatest "when there is a need for money and in the company in others as he is easily influenced by peers". The judge recorded factors that were said to be likely to reduce the risk were "gaining employment and not associating with likeminded peers".

11. The judge at paragraph 51 expressed his concern at the Appellant's failure to comply with the terms of his immigration bail by failing to report and that he was prosecuted for an offence committed during his time in prison. The judge concluded that these matters did not "inspire any confidence that the Appellant had learnt his lesson".

12. The judge said as follows:-

> "52. The Appellant was unable to tell me any significant about his offences in evidence. The account which he gave me of the reasons for his conviction for threatening behaviour do not seem to reflect what is said about that offence in the OASys assessment. There is it said that he had been banned from Farm Foods because of his previous behaviour and used threatening and abusive words and behaviour when asked to leave by the manager. He could tell me nothing about his criminal damage offence yet according to the assessment it involved the Appellant with others entering a scrapyard and causing damage by smashing the window of a crane and using that crane to smash another crane. It is also said that he was involved in smashing the headlights and windows of five trucks. His apparent unwillingness to tell me anything about that offence or alternatively to recall what happened is troubling.
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> 53. The Appellant's work history since his release from prison is not entirely clear. I do not have an undated reference from Trundley Properties Limited confirming that the Appellant had been part of their team at the start of 2019. However, he has only provided a few payslips relating to that employment and I have nothing from either Listerwoods or Travis Perkins. I am also concerned by the non-appearance of his mother at the hearing or for that matter, any of his friends. I have little evidence on the Appellant's current home circumstances and in any event, it would appear that his family in the United Kingdom (who presumably are his mother, sister and grandmother) had been unable to prevent him from offending in the past. Although the Appellant is currently said to be in employment I do not know if that employment is stable or secure. He has had no less than three jobs since his release from prison a little over one year ago. His most recent job is low wage.
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> 54. I am satisfied that the Appellant's conduct satisfies the applicable policy criteria for removal in that there appears to be a risk that he will offend in the future. He was assessed at medium risk of serious harm to the public in the OASys assessment completed less than two years ago. That assessment identified that the Appellant had a problem 'mixing with bad company, 'managing money and dealing with debts' and 'making good decisions' and there is no evidence that those factors may not continue to be a problem in the future. Although he has not come to the adverse attention of the police since his release from prison he has only been at liberty for a relatively short period of time and is still on licence.
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> 55. The probation report of 25 September 2019 does not say there has been a decrease in the risk posed by the Appellant from the assessment in the OASys Report. Those assessed at medium risk of serious harm are said to have 'identifiable indicators of risk of serious harm. The offender has the potential to cause serious harm but is unlikely to do so unless there is a

change in circumstances, for example failure to take medication, loss of accommodation, relationship breakdown, drug or alcohol misuse'. It was said in the OASys assessment that the Appellant was 'currently easily encouraged to offend by associates' and there is nothing in the probation report to suggest that has changed despite his attendance on the CHOICES rehabilitation group programme and what is said to have been the high level of engagement and understanding shown by him in relation to the programme. Although it is said that he 'appears' highly motivated 'learn from the programme' and to not reoffending (sic) in the future there is insufficient evidence that the risk factors identified in the OASys assessment are no longer present or even if they are that the Appellant will be able to avoid the temptation to offend. Even if he was able to establish an entitlement to permanent residence, I consider that the Respondent would be able to show serious grounds for removal."

In respect of rehabilitation the judge went on to say as follows:-

"56. I therefore have to consider if it would be proportionate to remove the Appellant and in doing so, I have to take into account the prospect of rehabilitation. It is only where rehabilitation is incomplete or uncertain that future prospects may play a role in the overall assessment. In Essa (EEA rehabilitation/integration) [2013] UKUT 316 it was said that:-

> 'If the very factors that contribute to his integration that assist in rehabilitation of such offenders (family ties and responsibilities, accommodation, education, training, employment, active membership of a community and the like) will assist in the completion of a process of rehabilitation, then that can be a substantial factor in the balance. If the Claimant cannot constitute a present threat when rehabilitated and is well-advanced in rehabilitation in a host state where there is a substantial degree of integration, it may well be disproportionate to proceed to deportation.'

At the other end of the scale, if there are no reasonable prospects of rehabilitation, the Claimant is a present threat and is likely to remain so for the indefinite future, we cannot see how the prospects of rehabilitation could constitute a significant factor in the balance. Thus, recidivist offenders, career criminals, adult offenders who have failed to engage with treatment programmes, Claimants with impulses to commit sexual or violent offences and the like may well fall into this category.'

57. Even if I felt the prospects of rehabilitation should have significant weight, they are not a trump card, as what the Directive and the EEA Regulations require is a wide-ranging holistic assessment. Both recognise that the more serious the risk of reoffending, and the offences that a person may commit, the greater the right to interfere with the right of residence. The prospects of rehabilitation must be reasonable prospects not simply the possibility of rehabilitation. I accept that where an EEA national has acquired permanent residence it may be permissible to attach substantial weight to the prospects of his rehabilitation in applying the principles set out in Regulation 27 particularly as the existence of permanent residence may suggest a significant degree of integration.

58. Where an applicant does not have a permanent right of residence it is important that the issue of rehabilitation is considered in context. In SSHD v Dumliauskas and Ors [2015] EWCA Civ 145 the Court of Appeal made it clear that in the case of an offender with no permanent right of residence 'substantial weight' should not be given to rehabilitation as 'the whole point of deportation is to remove from this country someone whose offending renders him a risk to the public' (paragraph 54). In the absence of evidence, it is not assumed that prospects are materially different between member states.

59. The Appellant's commission of a further offence during his time in prison and his failure to comply in terms of his immigration bail do not inspire confidence but he is someone who understands what is required to live in society. I know what is said in the probation report of 25 September 2019. According to probation, he is said to display 'excellent social skills and a respectful attitude towards staff and other participants. That report was prepared in September 2019 before the Appellant failed to comply with the terms of its immigration bail. It does not deal with the Appellant's employment records since his release from prison except to say that he had secured employment with Trundley Properties Limited. The report does not say why he left that company's employment and in particular whether there were any issues there. It also does not say anything about his degree of integration into society in this country. I have little idea how he spends his time here. His mother does not say very much about his level of integration in her statement.

60. I accept the Appellant will not find it easy to relocate to Latvia. However, he should have no language difficulties even if he does not speak Latvian as a proportion of the Latvian population continue to speak Russian. He is a fit, young man who should be able to relocate. There is no evidence of any significant degree of integration into society in the United Kingdom despite his length of residence here. The evidence I have had suggests that he has been repeated offender and although he may not have come to the adverse attention of the police since his release from prison, he has only been back in society for just over a year.

61. In summary I conclude that the Appellant's personal conduct as identified above represents a genuine, present and sufficiently serious threat; affecting one of the fundamental interests of society and that deportation would be proportionate in all the circumstances even if, contrary to my findings, he had established permanent residence at the date of the decision to remove him."

13. In respect of Article 8 the judge at paragraph 64 concluded that he does not have family life which would fall for consideration under Article 8. The Appellant does not have a partner or children here. He accepted that the Appellant has a private life but does not find that he has a significant degree of integration.

The Immigration (European Economic Area) Regulations 2016

14. *"'Worker', 'self-employed person', 'self-sufficient person' and 'student'*

4. – (1) In these Regulations –

(a) 'worker' means a worker within the meaning of Article 45 of the Treaty on the Functioning of the European Union (10);

(b)

'Worker or self-employed person who has ceased activity'

5. – (1) In these Regulations, 'worker or self-employed person who has ceased activity' means an EEA national who satisfies a condition in paragraph (2), (3), (4) or (5).

(2) The condition in this paragraph is that the person –

(a) terminates activity as a worker or self-employed person and –

(i) had reached the age of entitlement to a state pension on terminating that activity; or

(ii) in the case of a worker, ceases working to take early retirement;

(b) pursued activity as a worker or self-employed person in the United Kingdom for at least 12 months prior to the termination; and

(c) resided in the United Kingdom continuously for more than three years prior to the termination.

(3) The condition in this paragraph is that the person terminates activity in the United Kingdom as a worker or self-employed person as a result of permanent incapacity to work; and –

(a) had resided in the United Kingdom continuously for more than two years prior to the termination; or

(b) the incapacity is the result of an accident at work or an occupational disease that entitles the person to a pension payable in full or in part by an institution in the United Kingdom.

(4) The condition in this paragraph is that the person –

(a) is active as a worker or self-employed person in an EEA State but retains a place of residence in the United Kingdom and returns, as a rule, to that place at least once a week; and

(b) prior to becoming so active in the EEA State, had been continuously resident and continuously active as a worker or self-employed person in the United Kingdom for at least three years.

(5) A person who satisfied the condition in paragraph (4)(a) but not the condition in paragraph (4)(b) must, for the purposes of paragraphs (2) and (3), be treated as being active and resident in the United Kingdom during any period during which that person is working or self-employed in the EEA State.

(6) The conditions in paragraphs (2) and (3) as to length of residence and activity as a worker or self-employed person do not apply in relation to a person whose spouse or civil partner is a British citizen.

(7) Subject to regulation 6(2), periods of –

(a) inactivity for reasons not of the person's own making;

(b) inactivity due to illness or accident; and

(c) in the case of a worker, involuntary unemployment duly recorded by the relevant employment office,

must be treated as periods of activity as a worker or self-employed person, as the case may be.

'Qualified person'

6.– (1) In these Regulations –

'jobseeker' means an EEA national who satisfies conditions A, B and, where relevant, C;

'qualified person' means a person who is an EEA national and in the United Kingdom as –

(a) a jobseeker;

(b) a worker;

(c) a self-employed person;

(d) a self-sufficient person; or

(e) a student;

'relevant period' means –

(a) in the case of a person retaining worker status under paragraph (2)(b), a continuous period of six months;

(b) in the case of a jobseeker, 91 days, minus the cumulative total of any days during which the person concerned previously enjoyed a right to reside as a jobseeker, not including any days prior to a continuous absence from the United Kingdom of at least 12 months.

(2) A person who is no longer working must continue to be treated as a worker provided that the person –

(a) is temporarily unable to work as the result of an illness or accident;

(b) is in duly recorded involuntary unemployment after having been employed in the United Kingdom for at least one year, provided the person –

(i) has registered as a jobseeker with the relevant employment office; and

(ii) satisfies conditions A and B;

(c) is in duly recorded involuntary unemployment after having been employed in the United Kingdom for less than one year, provided the person –

(i) has registered as a jobseeker with the relevant employment office; and

(ii) satisfies conditions A and B;

(d) is involuntarily unemployed and has embarked on vocational training; or

(e) has voluntarily ceased working and has embarked on vocational training that is related to the person's previous employment.

(3) A person to whom paragraph (2)(c) applies may only retain worker status for a maximum of six months.

(4) A person who is no longer in self-employment continues to be treated as a self-employed person if that person is temporarily unable to engage in activities as a self-employed person as the result of an illness or accident.

(5) Condition A is that the person –

(a) entered the United Kingdom in order to seek employment; or

(b) is present in the United Kingdom seeking employment, immediately after enjoying a right to reside under sub-paragraphs (b) to (e) of the definition of qualified person in paragraph (1) (disregarding any period during which worker status was retained pursuant to paragraph (2)(b) or (c)).

(6) Condition B is that the person provides evidence of seeking employment and having a genuine chance of being engaged.

(7) A person may not retain the status of –

(a) a worker under paragraph (2)(b); or

(b) a jobseeker;

for longer than the relevant period without providing compelling evidence of continuing to seek employment and having a genuine chance of being engaged.

(8) Condition C applies where the person concerned has, previously, enjoyed a right to reside under this regulation as a result of satisfying conditions A and B –

(a) in the case of a person to whom paragraph (2)(b) or (c) applied, for at least six months; or

(b) in the case of a jobseeker, for at least 91 days in total,

unless the person concerned has, since enjoying the above right to reside, been continuously absent from the United Kingdom for at least 12 months.

(9) Condition C is that the person has had a period of absence from the United Kingdom.

(10) Where condition C applies –

(a) paragraph (7) does not apply; and

(b) condition B has effect as if 'compelling' were inserted before 'evidence'."

"Right of permanent residence

15. – *(1) The following persons acquire the right to reside in the United Kingdom permanently –*

(a) an EEA national who has resided in the United Kingdom in accordance with these Regulations for a continuous period of five years;

(b) a family member of an EEA national who is not an EEA national but who has resided in the United Kingdom with the EEA national in accordance with these Regulations for a continuous period of five years;

(c) a worker or self-employed person who has ceased activity;

(d) the family member of a worker or self-employed person who has ceased activity, provided –

(i) the person was the family member of the worker or self-employed person at the point the worker or self-employed person ceased activity; and

(ii) at that point, the family member enjoyed a right to reside on the basis of being the family member of that worker or self-employed person;

(e) a person who was the family member of a worker or self-employed person where –

(i) the worker or self-employed person has died;

(ii) the family member resided with the worker or self-employed person immediately before the death; and

(iii) the worker or self-employed person had resided continuously in the United Kingdom for at least two years immediately before dying or the death was the result of an accident at work or an occupational disease;

(f) a person who –

(i) has resided in the United Kingdom in accordance with these Regulations for a continuous period of five years; and

(ii) was, at the end of the period, a family member who has retained the right of residence.

(2) Residence in the United Kingdom as a result of a derivative right to reside does not constitute residence for the purpose of this regulation.

(3) The right of permanent residence under this regulation is lost through absence from the United Kingdom for a period exceeding two years.

(4) A person who satisfies the criteria in this regulation is not entitled to a right to permanent residence in the United Kingdom where the Secretary of State or an immigration officer has made a decision under regulation 23(6)(b),

24(1), 25(1), 26(3) or 31(1), unless that decision is set aside or otherwise no longer has effect."

…

Decisions taken on grounds of public policy, public security and public health

27.– (1) In this regulation, a 'relevant decision' means an EEA decision taken on the grounds of public policy, public security or public health.

(2) A relevant decision may not be taken to serve economic ends.

(3) A relevant decision may not be taken in respect of a person with a right of permanent residence under regulation 15 except on serious grounds of public policy and public security.

(4) A relevant decision may not be taken except on imperative grounds of public security in respect of an EEA national who –

(a) has resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision; or

(b) is under the age of 18, unless the relevant decision is in the best interests of the person concerned, as provided for in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989(17).

(5) The public policy and public security requirements of the United Kingdom include restricting rights otherwise conferred by these Regulations in order to protect the fundamental interests of society, and where a relevant decision is taken on grounds of public policy or public security it must also be taken in accordance with the following principles –

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

(b) the decision must be based exclusively on the personal conduct of the person concerned;

(c) the personal conduct of the person must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, taking into account past conduct of the person and that the threat does not need to be imminent;

(d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;

(e) a person's previous criminal convictions do not in themselves justify the decision;

(f) the decision may be taken on preventative grounds, even in the absence of a previous criminal conviction, provided the grounds are specific to the person.

(6) Before taking a relevant decision on the grounds of public policy and public security in relation to a person ('P') who is resident in the United Kingdom, the decision maker must take account of considerations such as the age, state of health, family and economic situation of P, P's length of residence in the

United Kingdom, P's social and cultural integration into the United Kingdom and the extent of P's links with P's country of origin.

…

(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.)."

Conclusions

15. There are six grounds of appeal. They are repetitive and diffuse. They do not sufficiently particularise the challenges to the decision. Mr Richards identified four distinct grounds in oral submissions. He did not pursue ground 6. However, in his oral submissions he did not draw my attention to the decision of the judge. His submissions challenged the decision of the Secretary of State. I will engage with each ground in order.

16. The first written ground is that the judge erred because the Appellant's mother had permanent residence. (There was no evidence before the First-tier Tribunal that the Appellant had permanent residence independently from his mother. The decision is not challenged on this basis).

17. Mr Richards said that because the Appellant's mother was granted Indefinite Leave to Remain under the EU Settlement scheme, the Secretary of State must have been satisfied that she has permanent residence. However, there is no support for this. There was no evidence before the judge to support the assertion.

18. It was argued by Mr Richards that in order to receive income support the Appellant's mother had to meet the "qualifying conditions" which included proving that she had worked for at least a year prior to claiming income support and meeting the right to reside condition for the duration of her claim. Thus, the Appellant's mother retained her worker status and was able to claim income support continuing to meet the right to reside test. There is no substance in the argument. There was evidence that the Appellant's mother came here as a worker in 2004. Her registration certificate was withdrawn in 2008. It may be that she was entitled to claim income support on the basis that she resided here and/or had come here as a worker but that does not mean that throughout the period 2010 to 2015, when she was in receipt of income support, she was a worker as defined in the Immigration (European Economic Area Regulations 2016. There is no support for this.

19. With reference to the written grounds, the Regulations make reference to temporary illness, but there was no evidence of this before the judge and in any event the Appellant's mother claimed income support from 2010 to 2015 and this cannot by any stretch of the imagination be characterised as a temporary period. The grounds say that the Appellant's mother was pregnant and gave birth to the Appellant's sister in 2009. This was not disputed. However, there was no evidence that she retained worker status during this period (or that she received Jobseeker's Allowance and was

actively seeking employment or that she was unable to work as a result of temporary illness or that she was on maternity leave- as asserted in the written grounds).

20. There was evidence that the Appellant's mother was in receipt of income support for almost five years. There was a record of employment from 2015. There is no evidence that there were periods of residence that could be aggregated to amount to five years' residence as a qualified person. The judge was wholly entitled to conclude that the Appellant's mother does not have permanent residence.

21. Ground 2 is an extension of ground 1. It is asserted that because the Appellant mother has permanent residence, the Appellant as her dependant has permanent residence and is entitled to a higher level of protection. However, the judge properly concluded that the Appellant's mother did not have permanent residence. At [55] the judge said that even if he were wrong about the level of protection and the Appellant has permanent residence, the Respondent would still be able to show serious grounds. There is no challenge to this in the grounds. Mr Richards did not address me on this finding.

22. Ground 3 asserts that the judge erred in relation to his findings about integration. The grounds say that it is "absurd to conclude that the Appellant, having spent over two thirds of his formative life in the UK, has not integrated in the UK". Mr Richards pursued this ground in oral submissions characterising it as a flaw in the assessment of proportionality. His challenge was to the decision of the Respondent. He said that there was no proper consideration of the length of time that the Appellant has been here. I conclude that there is no error of law. The judge properly considered integration on the basis that the Appellant does not have permanent residence. The judge was mindful of the history and entitled to conclude that there was no evidence of a significant degree of integration. Despite the length of time that the Appellant has been here, in the light of his offending and terms of imprisonment and lack of evidence of integrative links, the decision is unarguably rational. Periods of imprisonment weaken integrative links. There is nothing to support that the judge did not properly consider integration taking a holistic approach.

23. Ground 4 of the written grounds is that the judge did not apply a wide-ranging holistic assessment. In his oral submissions Mr Richards argued as ground 4 that the assessment of proportionality was flawed because there was no account taken of the Appellant's lack of ties in Latvia. However, this misrepresents the decision of the judge (see paragraph 60).

24. In the grounds it is asserted that the Appellant is a low risk offender contrary to the findings made by the judge. Mr Richards conceded in oral submissions that this was not supported by the OASys report. There was no properly articulated challenge to the level of risk posed by the Appellant as found by the judge in the light of the OASys report and the risk factors identified therein. The probation report did not conclude that there was a reduction in risk posed. The judge considered the positive aspects of the probation report but was entitled to attach weight to the Appellant's more recent behaviour. He considered that the Appellant had attended a

rehabilitation group programme, but was entitled to conclude that evidence of rehabilitation was limited and that in any event, because the Appellant does not have permanent and therefore the significance of rehabilitation is more limited. The judge's findings are grounded in the evidence and adequately reasoned.

25. Mr Richards relied on the four grounds as set out above. Ground 5 of the written grounds is a challenge to proportionality and an extension of ground 4. He did not rely on ground 6. In any event, I conclude that the judge properly identified the threat and properly engaged with the requirements of the 2016 Regulations. He properly considered future conduct and the risk factors identified by the author of the OASys Report and how they applied to the Appellant's present circumstances. The judge was entitled to express his concern about the evidence relating to the Appellant's employment.

26. The judge made findings which are grounded in the evidence. He took into account all relevant matters and applied the correct legal test. The decision was open to the judge on the evidence before him. The written grounds and Mr Richards oral submissions do not properly identify an error of law. The decision of the judge to dismiss the appeal under the Immigration (European Economic Area) Regulations 2016 is maintained.

27. The Appellant's appeal is dismissed.

28. No anonymity direction is made.

Signed *Joanna McWilliam* Date 20 September 2020
Upper Tribunal Judge McWilliam