Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00324/2019

THE IMMIGRATION ACTS

Heard at Field House, London	**Determination promulgated**
On Wednesday 25 August 2021	**On Tuesday 12 October 2021**

Before

UPPER TRIBUNAL JUDGE SMITH
DEPUTY UPPER TRIBUNAL JUDGE SKINNER

Between

MR AMADU DJABULA

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms C Hulse, Counsel instructed by Burton and Burton solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION

BACKGROUND

1. The Appellant is a national of Portugal. He was born on 24 September 1989. He came to the UK in 2012 then aged twenty-three years. We will come on to deal with his family background when setting out the evidence below. The Appellant has been convicted of two offences whilst in the UK. On 23 September 2015, he was convicted of driving whilst disqualified. He was fined and ordered to pay costs and charges. On 23 April 2019, he was convicted of assault occasioning actual bodily harm. Again, we will come on to the detail of those offences below.

2. On 17 May 2019, the Respondent made a deportation order against the Appellant pursuant to the Immigration (European Economic Area) Regulations 2016 ("the

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EEA Regulations"). In the accompanying decision letter, the Respondent also refused the Appellant's human rights claim under Article 8 ECHR. Accordingly, the Appellant had a right of appeal under the EEA Regulations and also against the refusal of the human rights claim.

3. By a decision promulgated on 14 November 2019, First-tier Tribunal Judge Robertson dismissed the Appellant's appeal under the EEA Regulations and on human rights grounds. In the course of that decision, Judge Robertson accepted that the Appellant had provided evidence that he was exercising Treaty rights from 2014 to 2019. The Judge found however that the Appellant posed a genuine, present and sufficiently serious threat affecting the fundamental interests of society and that it was proportionate to deport him to Portugal. In relation to the latter, the Judge noted that the Appellant continues to have some family members in Portugal. In relation to Article 8, the Judge found that the decision to deport was proportionate when the interference with the Appellant's private life was balanced against the public interest.

4. The Appellant appealed Judge Robertson's decision on the basis that the Judge should have agreed to adjourn the hearing to allow the Appellant to obtain a probation or pre-sentence report and also that the Judge had erred in his assessment under the EEA Regulations by failing to adopt the correct test. There was no challenge to the Judge's conclusions in relation to Article 8 ECHR.

5. Permission to appeal was refused by First-tier Tribunal Judge Grant-Hutchison on 13 December 2019. However, following renewal to this Tribunal, permission to appeal was granted by Upper Tribunal Judge Coker on 13 January 2020. Her decision was based principally on the ground challenging the assessment under the EEA Regulations, but she did not limit the grounds which could be argued.

6. By a Note and Directions dated 1 April 2020, Upper Tribunal Judge Reeds formed the preliminary view that, having regard to the Covid-19 pandemic, it would be appropriate for the error of law decision to be made on the papers. The parties were invited to make submissions on that course. The Respondent and Appellant objected to that course. The Respondent nonetheless filed written submissions addressing the Appellant's grounds.

7. Following consideration of the parties' objections, Upper Tribunal Judge Macleman sought some clarification of the Appellant's position but again indicated that the error of law hearing could be determined on the papers.

8. The appeal came before Upper Tribunal Judge Kekic on the papers on 16 September 2020. By a decision promulgated on 8 October 2020, she found an error of law on the second ground only. Judge Kekic identified gaps in Judge Robertson's reasoning and that she had failed properly to consider "where on the spectrum of seriousness the appellant's offending should be placed". Judge Kekic declined to

remit the appeal. She gave directions for the future conduct of the appeal in this Tribunal. She preserved certain findings of the First-tier Tribunal as follows:

> "24. The finding that the appellant has acquired permanent residence here is preserved, there having been no challenge to it by the respondent.
> 25. In the absence of any challenge from the appellant, I also preserve the finding that the appellant has no family life in the UK and that he has relatives in Portugal."

9. By a judgment handed down on 20 November 2020, in the case of Joint Council for the Welfare of Immigrants v The President of the Upper Tribunal (Immigration and Asylum Chamber) and another [2020] EWHC 3103 (Admin), Fordham J found the Practice Direction of the President of this Tribunal in relation to the making of error of law decisions on the papers to be unlawful because it involved "an overall paper norm". No issue was taken with the error of law decision in this case for that reason. There was no application to set aside Judge Kekic's earlier decision. That is probably unsurprising since the decision was to the benefit of the Appellant.

10. The appeal came before Upper Tribunal Judge Blundell at a hearing via Skype for Business on 12 May 2021. The Appellant was unable satisfactorily to join that hearing due to technical difficulties. The Judge therefore adjourned the hearing of his own motion and directed that a hearing be convened on a face-to-face basis. So it was that the appeal came before us.

11. The hearing was attended by Ms Hulse for the Appellant. She provided us with a skeleton argument. We also had a skeleton argument on behalf of the Appellant from the previous adjourned hearing and one filed following the error of law decision (dated 28 October 2020). The Respondent was represented by Ms Everett. The Respondent filed a skeleton argument dated 28 October 2020. In terms of evidence, we have before us an Appellant's bundle running to 36 pages which was before the First-tier Tribunal Judge (hereafter referred to as [AB/xx]) and a further bundle filed in response to Judge Kekic's decision running to 161 pages (hereafter referred to as [ABS/xx]). We also have a core bundle of documents including the Respondent's bundle before the First-tier Tribunal. We refer to documents in the Respondent's bundle as [RB/[annex/page]].

12. We heard oral evidence from the Appellant. We refer to his evidence and the documentary evidence as necessary below. We have read all the evidence but have regard only to that which is relevant to our assessment, findings and conclusions.

LEGAL FRAMEWORK

13. As the conduct in respect of which the Secretary of State made the deportation order in this case occurred before 31 December 2020, this appeal is governed by Chapter VI of EU Directive 2004/38/EC and the EEA Regulations made in 2016.

14. The Appellant is accepted to have been permanently resident in the UK. Accordingly, regulation 27(3) of the EEA Regulations ("Regulation 27") provides that a relevant decision (here to deport) may not be taken except on serious grounds of public policy or public security. As such, the basic level of protection is enhanced. Great importance is to be attached to the right of free movement which can be interfered with only in cases where the offender represents a serious threat to some aspect of public policy or public security. Regulation 23 of the EEA Regulations provides that an EEA national may be removed if the Respondent has decided that the removal is justified on grounds of public policy, public security or public health in accordance with Regulation 27.

15. Regulation 27(5) also provides that 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.

16. Proportionality in this context means that deportation must be both appropriate and necessary for the attainment of the public policy objective sought—the containment of the threat—and also must not impose an excessive burden on the individual deportee: B v Secretary of State for the Home Department [2000] Imm AR 478 per Simon Brown LJ.

17. It is also necessary to consider whether a decision to deport may prejudice the prospects of rehabilitation from offending in the host country, and to weigh that risk in the balance when assessing proportionality: Essa v Secretary of State for the Home Department [2012] EWCA Civ 1718 at [12]. Although we were not addressed by either party in this regard nor is it referred to in any of the skeleton arguments, we also bear in mind the guidance given by this Tribunal in relation to prospects of rehabilitation in MC (Essa principles recast) Portugal [2015] UKUT 520 (IAC).

18. In Secretary of State for the Home Department v Straszewski [2015] EWCA Civ 1245 the Court of Appeal held that:

(a) in deciding whether the removal of an EEA national with permanent residence is justified on grounds of public policy or public security great importance is to be attached to the right of free movement, which can be interfered with only in cases where the offender represents a serious threat to some aspect of public policy or public security;

(b) public policy includes the policy reflected in the interests of the state in protecting its citizens from violent crime and theft of property, which are fundamental interests of society. It is the risk of causing harm by future offending which the Respondent, and on appeal the Tribunal, is called upon to assess;

(c) save in exceptional cases where failure to remove might undermine confidence in the state's ability to administer justice, the determination is solely by reference to the conduct of the offender (in the context of any previous offending) and the likelihood of re-offending (see also in this respect Robinson v Secretary of State for the Home Department [2018] EWCA Civ 85 (appealed to the Supreme Court on a different point));

(d) the need for the conduct of the person concerned to represent a sufficiently serious threat to one of the fundamental interests of society requires the decision maker to balance the risk of future harm against the need to give effect to the right of free movement;

(e) wider factors, such as the public interest in deterrence and the need to demonstrate public revulsion at the offenders conduct, cannot properly be taken into account and normally has no part to play.

19. In Arranz (EEA Regulations - deportation - test) [2017] UKUT 294 (IAC) this Tribunal held that the burden of proving that a person represents a genuine, present and sufficiently threat affecting one of the fundamental interests of society rests on the Secretary of State and that the standard of proof is the balance of probabilities.

20. Finally, although we accept that the Appellant was entitled to appeal on human rights (Article 8) grounds (as the Respondent had refused a human rights claim in the decision under appeal), there was no challenge to Judge Robertson's decision in that regard and although Ms Hulse did at one point refer to a factor which she thought might impact on the Article 8 consideration but would not be relevant under the EEA Regulations, she withdrew that submission having realised that the facts of this case did not support it. We therefore say no more about Article 8 ECHR.

EVIDENCE, FINDINGS AND DISCUSSION

21. We begin with the issue of risk as we consider this to be central to the outcome of this appeal.

22. Although we accept that it is of a different nature from the index offence and somewhat historic, we refer first to the offence committed by the Appellant in 2015. He was convicted for driving whilst disqualified. In order to be convicted of that offence, he would first have had to be disqualified. There is however no offence recorded in the PNC record at [RB/E1-3]. We therefore asked the Appellant about this. His explanation was that he had been unaware of the disqualification from driving until he was stopped by the police. He thought it likely that correspondence regarding whatever offence had led to the disqualification was not received by him as he had moved address. He therefore did not attend court and was apparently disqualified from driving in his absence. Having found out about the disqualification, he says that he went to court, paid the fees and was told that he would have to abide by the remainder of the disqualification period. He says that the disqualification period was of six months of which two months was remaining when he went to court.

23. Whilst we have no reason to doubt that account, we are less willing to accept that the Appellant was unaware following those events why he was disqualified in the first place. We find it difficult to believe that this was for non-payment of a parking ticket as the Appellant suggested might be the reason. At the very least we consider it likely that it was for a driving offence such as speeding. We do not however need to make any express finding in this regard as we accept that the offence is unconnected with the index offence and although the index offence is more serious than the first offence, it is difficult to describe it as an escalation as the offences are of a very different nature.

24. We move on then to the index offence for which the Appellant was convicted in 2019. The offence was one of assault occasioning actual bodily harm. It involved his former partner ([MB]) and occurred on 29 October 2018. It appears that the Appellant was initially charged also with more serious offences but pleaded guilty only to the charge of which he was convicted.

25. This was an incidence of shocking domestic violence. The detail of what occurred according to the Crown Prosecution Service file is extracted in the OASys report dated 5 June 2020 at [AB/31-76] ("the OASys Report") as follows:

> "On 29/10/2019 [sic] at around 01.40, Police were called to an address at [G Close in Leicester, in relation to a domestic incident.
> The CPS documents give the following account.
> On the previous evening, the victim and Mr Djobula [sic] were in [MB]'s first floor flat, when she heard her neighbours come home. She asked Mr Djobula to be quiet so as not to disturb the neighbours. Mr Djobula took offence at this and an arguement [sic] began between himself and [MB]. Mr Djobula slapped the victim to the left side of her forehead, continued to hit her back and then pushed her out of the bed. While she was on the floor, he punched her twice to the mouth and nose. Her nose began to bleed, at which point he got out of the bed, got on top of her, and began to strangle her.

> The victim reported that she was struggling to breathe and believed she would die. Djobula was heard saying 'I am going to strangle you until I kill you. I don't care if I go to jail.'
> The victim tried to grab something to hit him but nothing was within reach. He kicked her twice in the face.
> The victim went into the living room whilst Mr Djobula went to the kitchen saying 'I will get a knife and I will not leave until I have killed you.' Believing his threats, [MB] ran to a window and attempted to escape. Mr Djobula followed her to prevent her from escaping, he then let go and the victim fell to the floor. She reported hearing her knee crack.
> She fled to the flat below to ask for help. Mr Djobula followed her and assaulted her again in front of the neighbour. The neighbour reported seeing Mr Djobula grab the victim's hair and pull a clump out. He then dragged the victim to the floor. The witness called the Police, who arrived a short time later."

26. The Appellant did not meet with the writer of the OASys Report. We therefore asked him whether he agreed with that description of the offence. The Appellant first appeared reluctant to discuss the offence as he said he wanted to put it behind him. Obviously, though, since the risk arising from this offence is the central issue, we were keen to hear his account. He accepted that the account was broadly accurate. He said though that he did not recall threatening to kill [MB]. He also said that the events occurred because he was drunk. We pointed out that the OASys Report stated that the Appellant and [MB] had consumed only about two or three beers. He insisted however that they were strong beers and that the alcohol had fuelled his behaviour. He said he had not drunk any alcohol since. We have nothing to gainsay his evidence that he has since abstained from alcohol. However, we are not persuaded that alcohol played any significant part in the index offence given the description of the offence and that the Appellant is not said to have been acting under the influence of alcohol at the time.

27. In the section of the OASys Report dealing with relationships, the probation officer who completed the assessment noted that the victim had reported that the Appellant had previously hit her on a number of occasions. He also expressed significant concerns in the section on "Thinking and Behaviour" regarding the lack of control displayed throughout the commission of the offence. In particular for our purposes, he notes that the Appellant's behaviour in attacking [MB] suggests issues with anger management and his attitudes towards intimate partners. Similarly, in the "Attitudes" section, the probation officer expressed concerns about the Appellant's views of woman and their roles in intimate relationships. In section R6.1, the probation officer notes that "[t]here are concerns that Mr Djobula holds views in support of using violence to solve conflicts, and that he holds negative views towards women."

28. The Appellant denied that he had ever hit [MB] before the index offence as she had reportedly told police was the case. He said that she had written a letter for the Tribunal supporting his position that the events were out of character. We had no such letter on file. It is recorded at [19] of the First-tier Tribunal's decision that the Appellant's partner "of 3 years" who we assume from what the Appellant told us

must be [MB] had "previously provided him some support" but Judge Robertson records that there was no statement from her. The Appellant says in his statement at [ABS/1-4] at [§17] that he had moved away from the area where he was previously living and broken off his previous associations. As we will come to, his evidence was that he had avoided relationships to avoid the possibility of similar events reoccurring. We find it difficult to believe therefore that [MB] would have provided him with supporting evidence. In any event, as we say, we do not have that evidence and so we cannot take it into account.

29. We turn then to the sentencing remarks at [RB/D1-3] as follows:

> "Mr Djobula, stand up please. As you can tell, had you been convicted of the allegations that were originally made against you, you would be going to prison for several years. The prosecution have chosen not to pursue those matters any further, and so I deal with you only for the matter that you have now pleaded guilty to. Without going into the rights and wrongs of what happened, there was an argument between the two of you, which ended up with her jumping out of the window. In the process she damaged her knee.
> You went downstairs to find her and, on your own account, you lost your temper with her, you were angry, and you pulled at her hair, and you punched her several times in the face, and you kicked her. The Crown do not seem to think that those circumstances make her a vulnerable woman, but in my judgment whether in the technical sense of the word she was vulnerable or not, you were attacking at that stage an entirely defenceless and injured woman, which is why I have taken the starting point as being fifteen months.
> I bear in mind however that you are a man of previous good character and what happened that night, on the limited information I can now work with, appears to have been on the spur of the moment, and out of character. And therefore, bearing those matters in mind, I would take the fifteen-month starting point down to twelve; and I take the view that in all the circumstances you are entitled to a 20 per cent discount for your guilty plea. In round figures that brings it down to an immediate prison sentence of nine months, of which you have probably served most if not all.
> Please be aware of this: that as soon as you are released, you will be subject to supervision in the community by the probation service for twelve months. That involves you cooperating with the probation service, all right? If you do not, there could be trouble. I cannot order you to stay away from your victim, I can certainly advise you to stay well away. Nine months, thank you."

30. Although we accept that the Judge does refer to the Appellant being of previously good character (in spite of the earlier driving offence) and does say that the index offence appears to have been out of character, it is fair to observe that the Judge's remarks are not ones of wholehearted support in that regard. It is evident from what is said that the prosecution was initially for more serious charges which were not pursued and that the Judge could only sentence the Appellant for the charge which he admitted and only on the evidence related to that charge. As the Judge noted in his sentencing remarks, had the Appellant been convicted of the charges initially brought against him, he would have been sentenced to a term of several years in prison. Obviously, we too can only have regard to that evidence and the

conviction which resulted when assessing risk, but we do note that, in spite of this being the Appellant's first conviction (at least of an offence involving violence), he was still sentenced to a term of imprisonment.

31. Even in relation to the single offence to which the Appellant pleaded guilty, the sentencing Judge noted that, once downstairs, the Appellant was attacking an entirely defenceless and injured woman.

32. According to the OASys Report, the Appellant was "time served" at the date of sentencing and therefore would have been released on licence. He was however detained under immigration powers thereafter. We were told that he was not released from immigration detention until June/July 2020. In the meanwhile, his licence had come to an end, and he was not therefore engaged with the probation services. We accept therefore Ms Hulse's submission that the Appellant for that reason would not have been eligible for any rehabilitation courses although we note that this does not mean that the Appellant could not have engaged in courses such as anger management voluntarily and of his own volition.

33. The Appellant says in his statement dated 27 April 2021 at [ABS/1-4] that he is "a changed man". He "greatly apologise[s] for the trouble and upset that [he has] caused with [his] actions". He did not seek to excuse his behaviour before us. However, he did say at one point that [MB] "was a little bit on the crazy side" and that they had "many arguments" which suggests that he apportions some blame to his victim.

34. The conclusions of the OASys Report are that the Appellant is at high risk of causing serious harm to known adults in the shape of [MB] and "any past or future partners". He would also be a medium risk to "any children within an intimate relationship who may witness domestic violence incidents". The writer of the OASys Report provides this detail about the risk:

> "As this is Mr Djobula's first conviction for domestic violence and I have not been able to discuss his offending with him, it is difficult to be certain of when the risks might be greatest. Based on the information available I make the following assessment:
> KNOWN ADULTS – High and imminent in the community.
> The risk to past, present or future partners is likely to be greatest when:
> - Mr Djobula is living with a partner and they argue
> - Mr Djobula becomes angry with his partner
> - Mr Djobula believes that his partner has acted inappropriately n some way.
>
> The risk to [MB] is likely to be greatest when:
> - Mr Djobula is in the community and seeks her out
> - Mr Djobula rekindles his relationships with her.
>
> CHILDREN – Medium and not imminent in the community – would become high and imminent if Mr Djobula resides in a household with children.
> The risk is likely to be greatest when:
> - Mr Djobula is living in a household with children, or is visiting regularly

- Mr Djobula begins to argue with his partner
- Mr Djobula is unable to control his anger or emotions while children are present.

The risks posed to all parties while Mr Djobula is in custody is assessed as low."

We accept that the risk posed by the Appellant is otherwise said to be low whether in the community or in custody.

35. We take into account that the writer of the OASys Report had not met with the Appellant and that he had not had any opportunity to engage with the Probation Service due to his detention under immigration powers. Nonetheless, we consider that the risks posed by the Appellant as outlined in the OASys Report are accurately summarised. That is because the Appellant himself said in his evidence that he has avoided entering into relationships since his release to avoid a repetition of the events which led to his conviction.

36. We accept that this evidence might be said to reflect an insight by the Appellant into his offending behaviour and an attempt to avoid such risks as might otherwise arise. However, the difficulty is that it also suggests that the Appellant cannot trust himself if he were to enter into a relationship which suggests that the risk still exists were he to find himself in a relationship. It does not suggest that the risk has been eliminated but rather that it is being avoided by the Appellant for the time being.

37. We asked Ms Hulse to address us about how we should treat this evidence. We pointed out that the Appellant is unlikely to remain celibate for ever. She accepted that position but suggested that we could find that the Appellant did not pose a risk because "for the moment …he will steer clear of situations that might cause problems". She submitted that we should find it reassuring that the Appellant is avoiding such situations. She said that the Appellant's evidence showed that the offence had a big impression on the Appellant and that he has taken steps to draw a line under it.

38. The Appellant has asserted in his statements that he has changed. However, that change is even by his own admission incomplete. He avoids relationships we find because he is unable to trust himself. Whilst that might indicate a desire to change and a certain insight into his offending behaviour, it does nothing to alleviate our concerns that he still poses a risk were he to enter into a relationship now. Whilst he has expressed a reluctance to do so for now, he has only been released from custody for about one year and for much of that year there has been a lockdown as a result of the pandemic. We are not therefore persuaded that he will not do so until he considers that he is able to avoid the behaviour which led to his previous conviction. We are far from reassured that the risk is eliminated or even minimised by the Appellant's avoidance of relationships. His evidence suggests that he is unable to confront the problems within himself which caused the offence in the first place and to change his behaviour. Were he to enter into another relationship at the present time, we are very far from being satisfied that he would not once again lose control and attack a partner.

39. For that reason, based on the level of risk outlined in the OASys Report and the triggers identified, we are satisfied that there are serious grounds for believing that the Appellant poses a genuine and present risk to members of the public in the form of future partners and any children they may have. Whilst that risk is confined to the domestic setting it is no less a risk to members of the public. Moreover, as the risk of offending involves incidents of domestic violence, the offence is also one of social harm which offends against public policy.

40. We did not understand Ms Hulse to suggest that if we found the risk to be genuine and present, we could not find it to be sufficiently serious. In any event, we are satisfied that it is so. We have recorded the particulars of the offence. The attack was a vicious one. Even after the Appellant's victim jumped from a first-floor window to avoid the attack, he pursued her and continued the attack in front of a witness.

41. For the foregoing reasons, we are satisfied that there are serious grounds for believing that the Appellant poses a genuine, present and sufficiently serious threat affecting the fundamental interests of society. He is a sufficient threat to public policy and public security.

42. We can deal with prospects of rehabilitation very shortly given what we say at [32] above. We accept that the Appellant was unable to engage with the Probation Service through no fault of his own. He was not eligible to enrol on any courses via that service. However, for that reason, there is no evidence to suggest that his deportation would interfere with his rehabilitation. He could as easily engage with suitable courses to control his anger if he so wished in Portugal as in the UK.

43. We deal finally and again quite shortly with the proportionality of deportation. We did not understand Ms Hulse to suggest that, if we were to find against the Appellant in relation to risk (as we have done), that a proportionality assessment would make any difference. Nonetheless, we record the evidence we had in this regard and our findings about that evidence.

44. Although as we have indicated at [8] above, Judge Kekic preserved findings made by Judge Robertson concerning the family circumstances of the Appellant, Ms Hulse in her skeleton argument made assertions which were diametrically opposed to those findings. For that reason, we allowed her to deal with the Appellant's family circumstances by way of oral examination of the Appellant. He provided the following information.

45. The Appellant was born in Portugal although his family are originally from Guinea. He did not know his mother. He was raised by his father. The Appellant moved out of the family home when he was sixteen. He moved to the UK when he was aged twenty-three years. The Appellant's father died in 2017.

46. The Appellant has siblings. He is closest to his sister who lives with her family in Leicester. He sees her every two to three weeks. She has not provided any evidence in this appeal. He also has a brother in the UK, but the Appellant has not seen him since 2016/2017. He thought that both his siblings in the UK had applied to remain in the UK under the EU Settlement Scheme as they have children in the UK.

47. The Appellant said that he did have family members in Portugal, but they were "not direct family". He said that they were not relatives with whom he could live in Portugal. He said that he had "left home at an early age" and was not a "very family guy". He also said that his father had a lot of children some of whom he had never met. He thought he may have family also in France.

48. We accept based on that evidence that the Appellant does have family members in the UK. However, we are unable to find that he has a close relationship with his family members here. He is closest to his sister. However, he sees her only every few weeks. There is no reason why she could not visit him if he were to return to Portugal. We do not therefore accept that the Appellant has family life with his family members in the UK. There is no evidence of any particular emotional or financial dependency.

49. Although we accept the Appellant's evidence that he does not really know his family members who remain in Portugal we do not consider that to be a weighty factor in the proportionality assessment. He does not have a close (or any evidenced) relationship with his family here save for his sister and even she has not provided evidence in his support. Moreover, the Appellant by his own admission is not family orientated.

50. The Appellant left home when he was a teenager and worked in Portugal before coming to the UK. He has had some jobs since coming to the UK but there is no evidence that he could not find similar unskilled jobs in Portugal. He still speaks the language having been brought up and educated in that country. We accept that the Appellant has integrated in the UK by working here. However, although we have accepted that he is permanently resident in the UK, he has been here for less than ten years and has not provided evidence of any significant integration in that time. We are satisfied that the time spent in the UK is not such as to break his integrative ties to Portugal.

51. Having weighed up all the evidence, we are satisfied that the decision to deport is a proportionate one.

52. For the foregoing reasons, we are satisfied that the Appellant's deportation is justified and proportionate under the EEA Regulations. We therefore dismiss the appeal under the EEA Regulations. As we have already indicated, there was no challenge to Judge Robertson's conclusions in relation to Article 8 ECHR. We therefore dismiss the appeal also on human rights grounds.

CONCLUSION

53. There are serious grounds for believing that the Appellant poses a genuine, present and sufficiently serious threat to public policy and public security. For that reason, his deportation is justified under the EEA Regulations. For the reasons we have given, we are also satisfied that deportation is proportionate and will not affect the Appellant's prospects of rehabilitation. We adopt the conclusions of Judge Robertson (which were not challenged) that the Appellant's deportation is not disproportionate when the interference with his private life is balanced against the public interest. We therefore dismiss the appeal under the EEA Regulations and on human rights grounds (Article 8 ECHR).

DECISION

The appeal is dismissed under the EEA Regulations and on human rights (Article 8) grounds.

Signed: *L K Smith* Dated: 13 September 2021
Upper Tribunal Judge Smith