Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00241/2020

THE IMMIGRATION ACTS

Heard at Bradford (via Microsoft Teams)	**Decision & Reasons Promulgated**
On 25 March 2022	**On 26 April 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

PAWEL MARCANIAK
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Hingora instructed by Burton & Burton Solicitors.
For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. By a determination promulgated on 25 November 2021 the Upper Tribunal set aside the decision of the First-tier Tribunal and listed the appeal for a Resumed hearing.

2. At [25] of the error of law hearing it was accepted that the First-tier Judge had not erred in finding the appellant had only established a right of permanent residence and therefore the middle of level of protection, on the basis that although the appellant claimed to have

been working in the UK and exercising treaty rights for thirteen years, the evidence provided did not support such a claim.

3. For the purposes of the Resumed hearing a substantial volume of additional evidence has been made available. That includes a statement and supplementary statement by the appellant confirming his remorse, expressing his intention not to reoffend, and repeating his claim to have worked for a far longer period than the First-tier Tribunal Judge found.

4. Within the bundle, corroborating the appellant's claim, is a statement from HMRC setting out a schedule of income earned, and the tax and National Insurance contributions paid by the appellant. This covers the tax years 2007/2008 through to 2020/2021.

5. It was accepted that this evidence supported the contention that the appellant had been exercising treaty rights in the United Kingdom for a period of ten years. The level of protection to which the appellant is therefore entitled is not the middle level of protection but the higher level of protection, that of imperative grounds.

6. In the Refusal letter at [14 – 16] it was confirmed that consideration had not been given to whether the appellants deportation was justified on imperative grounds of public security.

7. Notwithstanding the appellant's period of imprisonment it was not made out that the links that he has formed and his integration in the United Kingdom during this period have been in any way broken on the facts.

8. The burden is upon the Secretary of State to establish that deportation is justified. As it is an imperative grounds test it is necessary to establish exceptional seriousness of any threat in relation to which the objective cannot be achieved by less strict means.

9. In LG (Italy) v Secretary of State for the Home Department [2008] EWCA Civ 190 the Court of Appeal confirmed that an EEA national who had been here for 10 years can only be deported on imperative grounds of public security, which bear a qualitative difference to the less stringent grounds applicable to deportation of those with shorter residence. Imperative connoted a very high threshold, and the ground requires an actual and compelling risk to public security, though public security need not be equated to national security. The Court said that "risk to the safety of the public or a section of the public" seemed reasonably consistent with the ordinary meaning of the test. The Court seemed to be of the opinion that the severity of the offence committed was not necessarily one to make removal "imperative".

10. In VP (Italy) v Secretary of State for the Home Department [2010] EWCA Civ 806 the Court of Appeal endorsed LG (Italy) and said that imperative grounds of public security required not simply a serious matter of public policy but an actual risk to public security so compelling that it justified an exceptional course of removing someone who had become integrated by many years residence in the host state. The severity of the offence could be a starting point for consideration but there had to be something more to justify a

conclusion that that removal was imperative to the interests of public security. So the appellant, an Italian who had been here since 1986 and had served 9 years for attempting to murder his ex-wife, including twice trying to cut her throat and inflicting 32 knife wounds, could not be removed when there was a low risk of reoffending albeit a medium risk of serious harm to others.

11. It is not made out the higher threshold has been met in this case, even taking the Secretary of State's case at its highest, on the evidence. As noted in the error of law hearing the Magistrates Court also made a Restraining Order against the appellant to protect the victim of his offending which is to remain in force for a period of five years. The domestic remedy is therefore a less strict means than deportation to achieve the desired objective of preventing any further threat that the appellant may pose.

12. On the accepted facts, along with the proper application of the law, this appeal must be allowed.

Decision

13. I allow the appeal.

Anonymity.

14. The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson
Dated: 25 March 2022