Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: DA/00354/2019**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On the 21 November 2022	**On the 06 December 2022**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

RADOSLAW FIJALKOWSKI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Ms A Jones, instructed by Bark & Co Solicitors
For the respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Poland born in 1983. His appeal against deportation under the Immigration (EEA) Regulations 2016 was allowed by First-tier Tribunal Judge S J Clarke on 5 January 2021 on human rights grounds. This decision was set aside by Upper Tribunal Judge Kamara for the reasons given in her decision promulgated on 2 August 2021. The appeal was adjourned to be re-heard, *de novo*, by the Upper Tribunal.

Relevant facts

2. The appellant entered the UK in 2005. It is accepted he has been exercising Treaty rights for five years and has acquired permanent residence. In 2012, he was cautioned in relation to production by another of class B drugs.

3. On 12 June 2015, the appellant was convicted of four offences: conspiracy to knowingly evade the prohibition on the importation of class A drugs; conspiracy to knowingly evade the prohibition on the importation of class B drugs; conspiracy to supply class A drugs and conspiracy to enter into an agreement to facilitate the acquisition, retention, use or control of criminal property. On 19 June 2015, he was sentenced to four terms of imprisonment: 16 years, 5 years, 12 years and 5 years to run concurrently. It is accepted the appellant has not acquired 10 years residence under the 2016 EEA Regulations because his criminal activity has broken integrative links.

4. The appellant's partner, SW, is a Polish national. They have been in a relationship for 13 years and they have two sons born in the UK in 2008 and 2013. The children are in full time education and the appellant's partner works as a home carer for the elderly.

Preliminary Issue

5. The respondent submitted Article 8 was not in issue. It was not raised as a ground of appeal, it was not relied on in the appellant's skeleton argument and the First-tier Tribunal erred in law in allowing the appeal under Article 8. Mr Clarke relied on the respondent's written submissions dated 5 July 2022. He submitted the appellant had not pleaded the decision to deport was unlawful under section 6 of the Human Rights Act 1998 ('HRA'), notwithstanding a section 120 notice was served and the respondent refused the appellant's human rights claim.

6. The appellant submitted Article 8 was in issue before the First-tier Tribunal and the appellant had ticked the box on the appeal form identifying a refusal of a human rights claim. Ms Jones relied on her submission dated 24 June 2022 and applied to amend the grounds of appeal.

7. I appreciated the force of Mr Clarke's argument. However, Upper Tribunal Judge Kamara set aside the decision for hearing *de novo*. I agreed with Ms Jones that I can make a decision which the First-tier Tribunal could make if it was re-making the decision. The appellant's application to amend the grounds and to include an appeal under Article 8 was made very late, but having considered the overriding objective, I granted the application.

8. The appellant had raised human rights in response to a section 120 notice and the respondent had refused his human rights claim. The failure to specifically plead section 6 of the HRA in the notice of appeal to the First-tier Tribunal should not be held against the appellant. It is in the interests of justice for all matters to be considered at the hearing before me given they are based on the same facts.

Issues

9. Firstly, the burden is on the respondent to show that the appellant represented a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. It was agreed that the threshold test to be applied is that of serious grounds of public policy.

10. The second issue is whether the decision to deport is proportionate under the Immigration (EEA) Regulations 2016 ('2016 EEA Regulations') having considered all the circumstances.

11. Lastly, in considering Article 8, it is accepted the appellant is a foreign criminal and section 117C(6) of the Nationality, Immigration and Asylum Act 2002 applies. The appellant has to show 'very compelling circumstances' over and above those described in the exceptions in sections 117C(4) and (5).

Relevant law

12. Regulation 27(5) states that a relevant decision taken on public policy and public security grounds 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 interest of society, taking into account past conduct of the persons and that the threat need not be imminent;

    (d) matter 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.

13. In addition, the decision maker must take into account considerations such as age, state of health, family and economic situation, length of residence, social and cultural integration and the extent of the person's links with their country of origin. I also take into consideration the fundamental interests of society in Schedule 1 of the 2016 EEA Regulations. The relevant provisions in paragraph 7 are as follows:

    (c) preventing social harm;

(f) removing an EEA national with a conviction and maintaining public confidence in the ability of the relevant authorities to take such action;

(g) tackling offences 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);

(j) protecting the public.

14. I have considered the following case law to which I was referred in submissions:

(i) SSHD v Robinson (Jamaica) [2018] EWCA Civ 85;

(ii) R v Bouchereau (C-30/77);

(iii) Restivo (EEA – prisoner transfer) [2016 UKUT 00449 (IAC);

(iv) K v Staatssecretaris van Veiligeid en Justite (c-331/16) and H.F. v Belgische Staat C-366/16);

(v) HA (Iraq) v SSHD [2022] UKSC 22.

Appellant's evidence

15. In summary, the appellant relied on his witness statements dated 8 April 2019 and 13 February 2020 as evidence-in-chief. In cross-examination he stated his sister lived in Egham and his brother-in-law lived in Slough, three to four hours drive away from Dover where SW and the children lived. He accepted the siblings in the UK provided emotional support. The appellant's parents had both recently died and he had no family in Poland save for elderly aunts and uncles.

16. SW's father, mother, two sisters and two brothers lived in Poland. SW and the children went for two weeks' holiday in the summer. His oldest child could not speak Polish very well because he preferred to speak English, but he had to speak Polish in Poland. His youngest child speaks Polish. The appellant had not seen his children for the last three years because of the pandemic. He was struggling because he had moved prisons several times. He tried to speak to the children every day by telephone. SW was unable to visit because she had to look after the children.

17. In answer to questions about the OASys reports, the appellant stated he was only responsible for importing cannabis. He was not aware of the cocaine or heroin. He said he was involved in the conspiracy but not in the importation or supply of class A drugs. He accepted his appeal against sentence was rejected. The appellant shared a cell with his co-defendant in 2019 rather than share with an unknown cell mate. His co-defendant had chosen to serve his time in Poland. The appellant had not spoken to him for 4 years.

18. Prior to committing the criminal offences, he had worked for an agency doing cleaning, gardening and factory work. He worked for the Compass

Group doing three days on early shift (7am-2pm) and three days on late shift (2pm-8pm). He quit his job because he and his family moved to Dover not because he did not like the hours.

19. The appellant was unemployed for a year before he was employed by his co-defendant in what he thought was a legitimate tyre business. He contradicted the OASys report and stated he was not attracted by financial gain and had only been paid £1000-£1500 per week. He re-iterated he had knowledge of the class B drugs but not the class A drugs.

20. The appellant had done all the courses he could do in prison and he did not believe his criminal record would prevent him from getting work when he left prison. He stated the detention action group would help him get a job. He said there was no possibility whatsoever that he would re-offend and he was never coming back to prison. He was paid £8 in prison and had not been involved in any criminal activity in 8 years.

21. The appellant stated SW was never aware of his criminal activity. He denied having stated, in the OASys report, that he had discussed his intention with SW. He intended to live with SW and his children on release. He accepted he smoked 'weed' a few times but he was never addicted nor had he tried class A drugs. He could not settle in Poland with his family because his children only knew England, the English system and they had friends here. He had not looked into relocating to Poland and had not thought about whether SW and his children would go there if he was deported.

22. When asked about the courses he had taken in prison he did not know what the pass marks were and stated he just completed the course. He stated he now knew the impact of drugs and he had been in prison a long time.

23. In re-examination he confirmed he had transferred between prisons nine times in two and a half years and had been in five different prisons: Wormwood Scrubs, Pentonville, Maidstone, Wandsworth and The Mount.

SW's evidence

24. SW gave evidence in English. An interpreter was present in court but her assistance was not required. SW relied on her witness statements dated 22 July 2019 and 6 February 2020 as evidence-in-chief. She confirmed she had lived in Dover for 9 years and she is the appellant's partner. She lives with her two sons. J, aged 14 years, was in secondary school and K, aged 9 years, was in primary school. They had not visited the appellant in prison since the pandemic because they could not have physical contact with him and he had moved around a lot. It was difficult for the children to see the appellant in prison and they struggled returning home without him. J had broken his leg recently which made it difficult to travel. The appellant's relationship with his children was on going and the appellant telephoned both of them and SW every day.

25. When asked about the impact of the appellant's deportation, SW stated the last 8 years had been very difficult. The children struggled and asked about the appellant every day. J had been for counselling for two years

and asked about the appellant a lot. SW had not told the children the appellant's release date because she did not want to give them hope as they had been waiting for so long

26. SW stated she would not move to Poland. The children did not want to live there and they did not speak Polish well. They were born, educated and had friends in the UK. They visited Poland once a year and last visited in August 2022. They visit SW's parents for 1 or 2 weeks every summer in central Poland, 2 hours from Warsaw.

27. In response to a question from me, SW stated J's counselling stopped about 4 years ago when he was in year 8. It stopped when he was at secondary school because the school were of the view they could do no more for him as the issue was about his father. There was no referral outside school.

28. In cross-examination SW stated that she was currently working as a home carer for the elderly. She paid for childcare and was trying to only work during school hours. J attended breakfast club and stayed after school for homework club. K was waiting for an assessment for ADHD and had a final appointment next month.

29. SW could offer no reason why she could not get a job in Poland but stated that renting a house was expensive and it would be difficult. She had done no research and had not thought about it because the children did not want to leave. The UK was their home. Finding a job would be difficult and low paid. Her family lived in a small village. She would have to find schools in a big town which would be expensive. She had no idea about the quality of schools because she had not looked at them.

30. There was no medical evidence of SW's mental health although she was struggling as a single mum raising two boys. She felt depressed and had been prescribed medication 2 years ago to calm her down. She stopped taking the medication because of the children and she had to work in the morning.

31. K had attended an appointment last month and had a final assessment next month. There as no formal assessment yet but it was almost certain (99%) he had ADHD. There were no up to date school documents because she was not told by her solicitor she needed to provide further evidence. Her children were not fine notwithstanding there had been no intervention from social services or social workers.

32. SW could not go to Poland because she and her children did not want to go. Her parents were in the same house she grew up in. They had both worked making hand made crystal and were now retired. The average wage in Poland was less than £200 per month. Her brothers were working, but her siblings could not help financially because they were struggling too. They had a conversation about life in Poland last year. SW knew how difficult it was. She did not need to ask them if they could help her.

33. SW was asked about the OASys report in which it stated the appellant had told her of his intention to engage in criminal activity and she had said for

him to do whatever he wanted as long as it did not impact on her and the children. She stated she had not discussed the appellant's intention to engage in criminal activity and had only found out about what was going on from lawyers after he was arrested. She did not encourage him to commit a crime. In response to a question from me, she stated she found out about the appellant's involvement in criminal activity a few weeks after his arrest.

Respondent's submissions

34. Mr Clarke relied on the refusal letter and submitted the appellant was a genuine present and sufficiently serious threat affecting the fundamental interests of society listed in paragraph 7 of Schedule 1 of the 2016 EEA Regulations, namely (c), (f), (g) and (j).

35. Mr Clarke relied on Bouchereau and Robinson. He submitted the appellant's offending behaviour was extreme and was sufficient to establish a genuine, present and sufficiently serious threat to public policy and public security. In addition, the appellant in oral evidence still denied his involvement in class A drugs. He had not come to terms with the extent of his offending behaviour and was attempting to minimise his criminality.

36. Mr Clarke submitted there were credibility issues in relation to SW's evidence which was inconsistent with the interview referred to in the OASys report. SW had carried out no investigations in relation to Poland.

37. Mr Clarke submitted the OASys reports demonstrated the appellant was still at risk of re-offending and there was a medium risk of serious harm in the community which was likely to increase if the appellant had no income. The appellant's criminality was motivated by financial gain, his association with his co-defendant and SW's permission to engage in such conduct. The later OASys report was unsatisfactory and failed to consider risk in the community. Mr Clarke relied on Restivo and submitted the courses in prison were insufficient to outweigh the risk given the gravity of the offending. The respondent had shown the appellant was a genuine, present and sufficiently serious threat on serious grounds of public policy.

38. In assessing proportionality, Mr Clarke submitted there was a paucity of evidence of integrative links and the appellant's family life over the past 8 years was limited. The appellant was in a good state of health but there was insufficient evidence of the prospect of employment on release. The appellant had spent a considerable part of his lengthy residence in the UK in prison. He maintained links with Poland through SW's family. Taking all factors into account, including the gravity of the offence and risk on release, the scales weighed against the appellant.

39. In relation to Article 8, the appellant could not satisfy the exceptions to deportation. It would not be unduly harsh for the appellant to return to Poland without his family ('family split' scenario) or for his family to relocate with him ('family follow' scenario). There was insufficient evidence to show the effect on his children would be unduly harsh. There

were no very compelling circumstances and very significant weight should be attached to the public interest. Taking the appellant's case at its highest, his deportation was proportionate under the 2016 EEA Regulations and under Article 8.

Appellant's submissions

40. Mr Jones relied on her skeleton argument dated December 2021 and submitted the evidence relied on was the same for both the EEA appeal and Article 8 appeal. It was apparent from the OASys reports that the appellant had accepted responsibility for his offending behaviour and his involvement in class A drugs. The OASys report did not support Mr Clarke's submission that SW actively encouraged the appellant's criminal activity. The appellant did not minimise his role in the criminal enterprise and admitted being involved for six months which was longer that the police surveillance from June to mid-October 2014.

41. The appellant had been in prison for just over 8 years and his conditional release date was 28 November 2022. The latest OASys report was written with the knowledge of that release date in providing the statistics on risk in the community. The appellant had been a model prisoner and distanced himself from negative influences. The risk of re-offending and risk of serious harm was extremely low. Mr Jones submitted the appellant had shown he had changed his behaviour and was adamant he was never going back to prison. The respondent had failed to show the appellant was a serious threat and the offence in itself was insufficient on a proper application of the 2016 EEA Regulations.

42. SW was an impressive witness and she had made considerable efforts to keep the family going in the appellant's absence. She was a single parent of two boys and had found it financially and emotionally hard. It was apparent she had a close relationship with the appellant and he spoke to her and the children every day. The appellant's deportation was disproportionate under the 2016 EEA Regulations and under Article 8.

Conclusions and reasons

43. In coming to the following findings, I have considered the oral evidence, the documentary evidence in the respondent's bundle, the appellant's bundle before the First-tier Tribunal and the bundle submitted for the hearing before the Upper Tribunal on 13 December 2021, which was adjourned because the appellant was not produced. There has been a delay in this case as a result of difficulties arising from the pandemic. There was no further documentary evidence submitted.

44. The appellant has been convicted of four very serious offences involving a well organised and sophisticated drug importation and distribution business. The nature of the business came to light as a result of a police surveillance operation from June to October 2014. Heroin, cocaine and cannabis were imported from continental Europe in HGV lorries. Class A drugs were concealed in the spare tyres and the cannabis was in boxes within the cargo. Substantial cash payments were put in the spare tyres for the return trip. When the police apprehended the appellant and his co-

defendant there was 53kg of cocaine in one of the spare tyres and 47kg of cannabis in boxes in the cargo. The police also found £150,000 in cash in the van and a further £24,000 in the boot of the appellant's car.

45. In sentencing the appellant Judge May stated that the appellant was his co-defendant's part-time assistant and he was paid for the work done rather than taking a share of the profits. However, the appellant was fully acquainted with the operation and he took a leading role, standing in when his co-defendant was away. The appellant was sentenced to a total of 16 years' imprisonment. His co-defendant was sentenced to a total of 20 years' imprisonment and there were 5 others sentenced at the same time to terms of imprisonment of 6 to 11 years.

46. The October 2019 OASys report states there is a low risk of reoffending (8/14%) and a medium risk of serious harm to the public. In the interview on 16 September 2019, the appellant accepted he had knowledge of the class B drugs but he had no knowledge of the class A drugs. The appellant and his co-defendant were good friends and their families spent a lot of time together. His offending behaviour was linked to financial gain. The assessor was of the view that if the appellant found himself with no income he could relapse and re-offend.

47. The October 2021 OASys report states that the likelihood of serious recidivism over the next two years is low (0.18%) and the risk of re-offending is low (8/10%). In the interview on 10 October 2021, the appellant claimed to have a greater understanding of the impact of his offending since he had been in prison. He was motivated to address his offending behaviour and had obtained qualifications in prison in food hygiene, English, money management and had completed the victim empathy pack. The appellant had been an enhanced prisoner since 2015.

48. The appellant stated that he was initially involved in servicing lorries and replacing tyres, but his co-defendant disclosed he had been making money importing class A drugs and asked the appellant if he was interested. The appellant stated he was only interested in cannabis. The appellant was motivated by greed. He maintained he was only concerned with importing cannabis but acknowledged he was fully aware that cocaine and heroin were being imported too. He stated he had discussed his intention with his wife who told him to do what he wanted as long as it did not impact on her and the children.

49. The assessor stated, "It is my assessment that a combination of greed, envy, criminal associations and a green light from his partner were factors that came together and led to a very poor decision." The appellant did not consider the consequences at the time and his claim to only be involved in cannabis distribution reduced the seriousness in his mind. The appellant stated that prior to living in Dover the appellant and his family lived with his co-defendant. They were attacked by a Polish gang of intruders looking for drugs and cash. The appellant and his co-defendant were badly injured and it was very distressing for SW and the children.

50. The assessor also stated, “It seems somewhat unlikely that he ever thought that the tyre servicing business was legitimate. It is my assessment [the appellant] was very aware of his [co-defendant’s] involvement in drugs distribution and was attracted by the prospect of making a lot of money without working very hard.” The assessor was of the view that the appellant was genuinely remorseful and did not intend to meet up with his co-defendant. The assessor stated the appellant had a good insight into his offending although he minimised it to some extent.

51. In Bouchereau, the court held at [28] and [29]:

> “The existence of a previous criminal conviction can, therefore, only be taken into account in so far as the circumstances which gave rise to that conviction are evidence of personal conduct constituting a present threat to the requirements of public policy.”
>
> “Although, in general, a finding that such a threat exists implies the existence in the individual concerned of a propensity to act in the same way in the future, it is possible that past conduct alone may constitute such a threat to the requirements of public policy.”

52. In Robinson, the Court of Appeal considered the above paragraphs and concluded at [71]:

> “It is important to recognise that what the ECJ was there talking about was not a threat to "the public" but a threat to "the requirements of public policy". The latter is a broader concept. At para. 28 the ECJ said that past conduct can only be taken into account in so far as it provides evidence of personal conduct constituting a "present threat to the requirements of public policy." As the ECJ said at para. 29, "in general" that will imply that the person concerned has a "propensity to act in the same way in the future" but that need not be so in every case. It is possible that the past conduct "alone" may constitute a threat to the requirements of public policy. In order to understand in what circumstances that might be so, I consider that it is helpful and appropriate to have regard to the opinion of the Advocate-General in *Bouchereau*, when he referred to "deep public revulsion". That is the kind of extreme case in which past conduct alone may suffice as constituting a present threat to the requirements of public policy.”

53. In Bouchereau, Advocate-General Warner said at p.742:

> "The United Kingdom Government … points out that cases do arise, exceptionally, where the personal conduct of an alien has been such that, whilst not necessarily evincing any clear propensity on his part, it has caused such deep public revulsion that public policy requires his departure. I agree. I think that in such a case a member state may exclude a national of another member state from its territory, just as a man may exclude from his house a guest, even a relative, who has behaved in an excessively offensive fashion. Although therefore, in the nature of things, the conduct of a person relevant for the purposes of Article 3 will generally be conduct that shows him to have a particular propensity, it cannot be said that that must necessarily be so."

54. In Restivo, the Tribunal held:

> "Where the personal conduct of a person represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, the fact that such threat is managed while that person serves his or her prison sentence is not itself material to the assessment of the threat he or she poses. The threat exists, whether or not it cannot generate further offending simply because the person concerned, being imprisoned, has significantly less opportunity to commit further criminal offences."

55. I find the appellant's personal conduct represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society on serious ground of public policy because the appellant has committed very serious crimes and his past conduct alone has caused such deep public revulsion that public policy requires his expulsion.

56. Alternatively, the appellant's criminal convictions are very serious. In addition, he continues to deny his involvement in importing and supplying class A drugs (notwithstanding his two convictions for which he received 16 and 12 years' imprisonment respectively). His claim that he thought the tyre business was legitimate is not credible. The appellant used to live with his co-defendant and they were attacked by a Polish gang looking for drugs and money. I do not accept SW encouraged the appellant's criminal activity, but that she was unable to prevent it. The appellant made a decision to assist his co-defendant and he took a major role in the conspiracy.

57. The appellant's involvement in large scale drugs importation, drug distribution and money laundering; its cross border dimension; the social harm caused by drug misuse; and the appellant's role as part of an organised criminal gang, coupled with his evidence denying involvement in class A drugs and attempting to minimise the extent of his criminality are sufficient to demonstrate the appellant is a genuine, present and sufficiently serious threat on serious grounds of public policy.

58. I accept the appellant is an exemplary prisoner. However, his behaviour and the courses he has undertaken in prison do not mitigate against this threat to any great extent.

59. I find the respondent has demonstrated the appellant represents a genuine present and sufficiently serious threat, on serious grounds of public policy, affecting the fundamental interests of society at (c),(f),(g) and (j) of paragraph 7 in Schedule 1 of the 2016 EEA Regulations.

60. In considering proportionality, I have assessed all the evidence in the round. The appellant has been in the UK since 2006. He is 39 years old and is in good health. He has been in prison for the last 8 years and there was insufficient evidence to show that his deportation would prejudice his prospects of rehabilitation.

61. The has a partner, SW, and two children aged 14 and 9 years old who were born in the UK. The appellant has not seen his children for several years. SW and the children are coping in the appellant's absence. It is not easy, but SW continues to work as a carer and the children are in full time education. They have had some issues at school and have found it

difficult being separated from the appellant. The eldest child has received counselling from 2015 to 2019 and the youngest child is currently undergoing an assessment for ADHD. The appellant has links to Poland through SW who visits her family with the children every year. The appellant's parents have recently died.

62. For the reasons given at [44] to [61] above, I find the decision to deport is proportionate under the 2016 EEA Regulations.

63. The Article 8 assessment is governed by section 117C of the Nationality, Immigration and Asylum Act 2002. The appellant cannot satisfy the exceptions in section 117C(4) or (5). He has not been lawfully resident in the UK for most of his life and the effect of his deportation on his partner and children would not be unduly harsh for the following reasons.

64. It is in the best interests of the children to remain with the appellant and SW. In the event of a family split, it is in the best interests of the children to remain with SW. She has been their only carer for the last 8 years and they have not seen the appellant during the last 2 to 3 years because of the pandemic.

65. There was insufficient evidence to show that SW and the children could not reasonably be expected to relocate to Poland. The children are British born but visit their mother's grandparents and relatives every year during the summer holidays. They can speak Polish, although they prefer to speak English. They will be separated from their school and their friends. There was insufficient evidence to show the appellant and his family could not accommodate themselves and educate their children in Poland. I find it would not be unduly harsh for SW and the children to return to Poland with the appellant.

66. I find that it would not be unduly harsh for SW and the children to remain in the UK without the appellant. It has not been easy for them while the appellant has been in prison but to their credit the children are doing well in school and SW has continued to work. The appellant keeps in contact with SW and his children by telephone and could continue to do so. There is no reason to believe the visits to Poland will not continue. There are relatives in the UK who live some three or four hours away who provide emotional support to SW.

67. The public interest in this case if significant. The appellant has committed very serious crimes with wide ranging and devastating consequences. There were no very compelling circumstances over and above those described in the exceptions. The public interest in deportation outweighs the appellant's and his family's Article 8 rights.

68. In all the circumstances, I find the decision to deport under the 2016 EEA Regulation is proportionate. The appellant's deportation is justified on serious grounds of public policy and does not breach Article 8.

Notice of Decision

Appeal dismissed

No anonymity order is made

J Frances

Signed Date: 2 December 2022
Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

As I have dismissed the appeal, I make no fee award.

J Frances

Signed Date: 2 December 2022
Upper Tribunal Judge Frances

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.