Upper Tribunal (Immigration and Asylum Chamber)

Appeal Number: DA/00415/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9 March 2022	**On 24 June 2022**

Before:

UPPER TRIBUNAL JUDGE BLUNDELL
DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between:

ETIANDRO SILVA

Appellant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: In person
For the Respondent: Ms Cunha, Senior Presenting Officer

DECISION AND REASONS

Order Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant's son is granted anonymity on account of the family proceedings described in this decision. No-one shall publish or reveal any information likely to lead members of the public to identify the appellant's son. Failure to comply with this order could amount to a contempt of court.

The anonymity order previously made in respect of the appellant is hereby discharged, there being no reason to make that order in light of the current UTIAC Guidance on such orders.

A. PROCEDURAL HISTORY IN THE UPPER TRIBUNAL

1. This decision follows a hearing before the Upper Tribunal which was convened for the purpose of remaking the decision on the appellant's appeal. His appeal was originally allowed by the First-tier Tribunal (Judge Stedman). In a decision which was issued on 4 June 2021, however, Upper Tribunal Judges Rintoul and Blundell allowed the Secretary of State's appeal against Judge Stedman's decision and directed that the decision on the appeal would be remade de novo in the Upper Tribunal. A copy of that decision is appended to this one.

2. There was a period of delay after the Upper Tribunal's first decision. It was necessary, for reasons which were explained at [51](iii) of that decision, to invoke the Protocol on Communication Between the Family Court and the Immigration and Asylum Chamber. Once the necessary information had been received from the Designated Family Judge, the appeal was listed before the present composition of the Upper Tribunal to be heard on 27 January 2022. That listing proved abortive because the appellant had only recently learned of it and was not able, in the time available, to secure the attendance of relevant witnesses. The appeal was adjourned and relisted to be heard on 9 March 2022 so as to ensure that the appellant was given a fair opportunity to present his case as he wished.

B. BACKGROUND

3. At [3]-[6] of the first decision, the Upper Tribunal set out the relevant background to these proceedings in the following way:

> [3] The appellant is a Portuguese national who was born on 11 September 1995. He is said to have entered the United Kingdom as a child, in 2010, but there is no documentary evidence of his date of entry.
>
> [4] The appellant received a police warning for affray in March 2012. He received convictions and non-custodial sentences for other offences in 2013, 2014 and 2017. On 9 November 2017, he received a sentence of two years' imprisonment, suspended for two years, following his conviction for an offence of robbery which took place in January that year. There was another summary conviction in 2018 and then, on 21 February 2019, the appellant was found to have committed a further offence during the operational period of a suspended sentence. The suspended sentence was activated and the appellant was sentenced to nine months' immediate imprisonment.
>
> [5] The non-custodial disposals had come to the attention of the respondent, but it was the activation of the suspended sentence which set in train her decision that the appellant should be deported from the UK. She notified him that he was liable to deportation on 15 March 2019. He responded with representations on 22 March 2019. The decision to

> deport was made on 1 August 2019. A supplementary letter was then issued on 17 September 2019.
>
> [6] The respondent did not accept that the appellant had anything more than the basic level of protection afforded to EEA nationals against deportation. She considered that he presented a genuine, present and sufficiently serious threat to the fundamental interests of the country. She concluded that his deportation was a proportionate course in the circumstances. She did not accept that his deportation would be in breach of Article 8 ECHR.

C. THE EVIDENCE BEFORE THE UPPER TRIBUNAL

4. In preparation for the appeal before the FtT, the respondent produced a bundle of documents which was filed with the Tribunal and served on the appellant in HMP Brixton. This bundle contains an immigration history followed by annexes A-L. Amongst those documents is a copy of the sentencing remarks of HHJ Sanders, who activated the suspended sentence of imprisonment in the face of five accepted breaches of that sentence (annex E) and a report from Her Majesty's Revenue and Customs ("HMRC"), which disclosed that the appellant had earned a total of £1632.98 in the tax years 2013-2016, had no employment recorded for the following two tax years, and that he had earned more than £3000 in the tax year 2018-2019. There was also a handwritten letter from one AD, who stated that the appellant was the father of her unborn child and that she was at that time a patient in a Mother and Baby Unit, suffering from 'Manic Bipolar' and in need of the appellant's care and support. The bundle also included an application for bail which the appellant had made in June 2019.

5. In preparation for the first hearing before the Upper Tribunal, the respondent filed and served an updated printout from the Police National Computer ("PNC"), showing that the appellant had been convicted by Snaresbrook Crown Court on 25 March 2021 of supplying a Class A Drug (cocaine) and had been sentenced to a term of 24 months' imprisonment, wholly suspended for two years, plus a rehabilitation activity requirement (40 days) and a programme requirement of 30 days.

6. The respondent was unable to comply with a direction made by the Upper Tribunal in its first decision, requiring her to file and serve copies of the sentencing remarks of the judge who imposed a suspended sentence on the appellant in 2021. Although enquiries were made of the Probation Service and the court, the respondent received nothing in response to those enquiries.

7. The appellant has been a self-representing litigant throughout the life of this appeal and his evidence has been filed and served in a piecemeal fashion. With his grounds of appeal to the FtT, he provided nine of his mother's payslips dated between May and August 2019. He filed further evidence shortly before the hearing before the FtT, comprising a letter from his Offender Manager dated 24 September

2019, a certificate from the London Community Rehabilitation Group and a scan relating to his then partner's pregnancy.

8. In the Upper Tribunal's first decision, it noted that the documentary evidence that the appellant had acquired a right to reside permanently in the United Kingdom was inadequate: [51](i). The Upper Tribunal noted that it was for the appellant to provide evidence in support of his apparent contention that he had acquired this right by reference to his relationship with his mother and her status as a qualified person in the UK from 2010 onwards. The address of the page on the HMRC website which might assist the appellant in obtaining his mother's National Insurance contributions was given for the appellant's benefit.

9. The appellant failed to comply with the direction that any additional evidence was to be filed and served five days in advance of the resumed hearing. He stated before us that he had only read the notice of hearing and had ignored the remaining documents. He did not ask for additional time to gather further evidence. He did produce a number of P60 documents relating to him and his mother. We will return to the import of those documents shortly. He confirmed that he had showed Whatsapp messages from his father to the respondent's representative on a previous occasion but that he no longer relied upon that material.

10. In addition to the evidence filed and served by the parties, the Upper Tribunal has before it a range of material from the Central Family Court, which was ordered to be disclosed by the order of the Designated Family Judge (HHJ Lynn Roberts on 12 October 2021. That material confirmed that the appellant's son (born 28 October 2019) was made the subject of a Special Guardianship Order by District Judge Mulkis on 4 June 2021. The order was made in favour of the child's maternal great aunt. Also disclosed pursuant to HHJ Roberts' order was the case summary prepared by the local authority for the purpose of those proceedings, which recorded (amongst other things) that the child's Special Guardian was content to accept the local authority's recommendation that both parents should have contact with the child three times a year.

11. We heard oral evidence from the appellant and his mother. The appellant gave evidence in English, his mother required a Portuguese interpreter (with whom she had no difficulty communicating). The appellant answered a number of questions from the Tribunal, in order to clarify matters in the papers, before he was cross-examined by Ms Cunha. The appellant's mother also clarified a number of matters for our benefit before she was cross-examined by Ms Cunha. We do not propose to rehearse what was said by the appellant and his mother at this stage of our decision. We will instead refer to their evidence insofar as it is necessary to do so to explain our findings of fact.

D. SUBMISSIONS

12. Ms Cunha invited us to consider the level of protection the appellant had acquired against deportation and submitted that he had not demonstrably acquired permanent residence. He had not achieved

'serious grounds' protection against deportation as it was not accepted that there was a five year period of residence in accordance with the Regulations.

13. Ms Cunha accepted, initially, that she was in difficulty in submitting that the appellant represented a genuine, present and sufficiently serious threat to the fundamental interests of the United Kingdom. We asked her what she said about the appellant's most recent conviction for supplying a class A drug during the course of this appeal. Having been provided with the details of this conviction from the PNC record which her colleague had handed up at the first hearing, Ms Cunha submitted that the appellant had not learned and had committed a very serious offence. It seemed that he was dependent upon crime for money and was content to resort to it even if it presented a potential problem in his deportation proceedings or in respect of his contact with his son. His mother felt that he was rehabilitated but his actions suggested otherwise. Nor was there any evidence of the appellant taking classes in order to progress his rehabilitation.

14. Ms Cunha submitted that there was scant evidence of the appellant's relationship with his son or, for that matter, with his step-son. In all the circumstances, she submitted that he had not acquired permanent residence, that he presented a clear risk to the UK, and that his deportation would be a proportionate measure.

15. The appellant accepted that he had offended a lot but he asked us to note that he had not committed violent offences. He had just wanted money and that was why he had continued to commit offences after the birth of his son. He had not spoken English when he first arrived but he was now able to start a career in the music industry. He was not organised and he had produced no evidence but he had been doing some work in the UK and if he was allowed to stay in the UK, the country would be proud of him. His latest conviction happened after the birth of his son and he had been a poor parent but his ex-partner was even worse. He did not blame the Home Office for trying to deport him but his son's face lit up when they saw each other.

16. The appellant said that he was really trying to turn his life around. He had a role model who was assisting him with his musical career and he was determined not to commit any further crimes. He was not a violent man but he had made some mistakes in the past. He had not committed a crime for months and he was content now to live in his ripped shoes, whereas he was previously materialistic. He knew that his life would turn out 'good' even if he was to be deported because he is a clever person who could use his brain in the right way now that he had understood his priorities in life.

E. ISSUES

17. We consider the issues before us to be as follows:

    (i) The level of protection the appellant has acquired against deportation (whether serious or basic grounds of public policy etc).

(ii) The extent of the risk posed by the appellant to the fundamental interests of the United Kingdom.

(iii) The proportionality of the appellant's removal from the United Kingdom.

(iv) The appellant's right to a family and private life under Article 8 ECHR.

F. ANALYSIS

(i) Level of protection against deportation

18. If he has acquired the right to reside permanently in the United Kingdom, the appellant may not be deported unless there are serious grounds of public policy or public security: regulation 27(1) of the Immigration (EEA) Regulations 2016 refers.

19. The appellant maintains that he has acquired the right to reside permanently in the UK. We do not accept that submission, for the following reasons.

20. The appellant has maintained throughout the life of this appeal that he and his mother arrived in the UK in 2010. That was the basis upon which the First-tier Tribunal proceeded but, as was noted in the Upper Tribunal's first decision, it did so on the mistaken basis that the point was not contentious. In fact, it has been a point in issue throughout, with the respondent refusing to accept the appellant's contention in the absence of evidence.

21. The Upper Tribunal went on, at [51](i) of that decision, to note that the appellant's residence from 2010 might be established by school or medical records and that his mother's work record might also be established in a number of ways. In the event, we received further evidence in the form of the appellant's mother's P60s from 2011/2012 to 2016/2017 but we still have no documentary evidence to show that the appellant arrived in the UK in 2010 as claimed.

22. The appellant's mother stated in oral evidence before us that the appellant's father (her ex-husband) had come to the UK in 2010. She stated that he was followed by the appellant and his sister, and she had been the final one to come to the UK. She stated that the appellant's father had initially been a cleaner. He had then worked in a casino before taking a role in security. They had lived together as a family until 2015, after which the appellant's father had left the family home and the marriage had fallen apart.

23. We note that the appellant's mother's account substantially accords with that given by the appellant but we are unable to accept that the appellant has discharged the burden of proving that he arrived in the United Kingdom in 2010. As was noted in the directions which accompanied the first decision, it would have been a simple matter to produce documentary evidence in support of this assertion. In the absence of such documentary evidence, we do not accept the evidence given by the appellant and his mother in this regard. The earliest evidence of the family's presence in the United Kingdom is the appellant's mother's P60 for the tax year 2011-2012. She earned £4127 in that tax year and we think it more likely than not that the family arrived in the UK at some point in the calendar year 2011, when the appellant was fifteen or sixteen years old. Had it been earlier, as the appellant claimed, we are satisfied that there would have been some evidential 'footprint' of their presence in the UK.

24. The appellant is not able to show that he has acquired permanent residence in his own right under regulation 15(1)(a) of the 2016 Regulations. There is very little evidence that he has worked in the United Kingdom and any such activity has been marginal and ancillary in the sense contemplated in decisions such as Brown v Secretary of State for Scotland [1988] 3 CMLR 403. The appellant has adduced insufficient evidence to show that he has ever acquired the status of a worker in EU Law. He certainly cannot establish on the evidence before us that he has been employed or self-employed for a continuous five year period.

25. Nor is the appellant able to establish that he was a student for a continuous five year period. There is no evidence before us of his schooling and certainly nothing which shows that he continued in education until the age of 20 or 21. There is, in any event, no evidence to show that the appellant held comprehensive sickness insurance during any time that he was studying in the UK, as required by regulation 4(1)(d)(ii).

26. Nor is the appellant able to show that he acquired permanent residence by residing in the UK as the child of an EEA national who was exercising Treaty Rights in this country. He sought to maintain at one stage that his father had worked continuously since his arrival in the UK but there is no evidence of this before us and the appellant confirmed at the start of the hearing that he no longer sought to rely on the Whatsapp messages from his father which he had mentioned at the previous hearing. (We did not see these messages but we observe that Ms Cunha did, and that she noted that they showed at best that the appellant's father was a qualified person from 2014 onwards, which could not avail the appellant, partly because his father left the family home in 2015 but more importantly because the appellant attained the age of 21 the following year. From that point onwards, he no longer qualified automatically to be his father's family member and there is no evidence before us of dependency.)

27. The only basis upon which the appellant could conceivably hope to show that he had acquired a right to reside permanently in the UK is with reference to his mother's exercise of Treaty Rights. The P60s

which we now have in front of us show that she earned the following sums in these tax years:

2011/2012	£4127.30
2012/2013	£7010.25
2013/2014	£10313.27
2014/2015	£13462.08
2015/2016	£13499.81
2016/2017	£14169.60

28. Prior to September 2016, when he turned 21, the appellant was automatically his mother's family member, as defined by regulation 7(1)(b)(i). The evidence is insufficient to show that she was a qualified person for five years continuously before that date. She appears to have started work at some point in 2011 but we have insufficient evidence before us to show that she began before September 2011. The P60 obviously sheds no light on that and the sum earned suggests that she started work towards the end of the year. There are no bank statements or payslips and there is no evidence of National Insurance contributions, despite the suggestion made in the Upper Tribunal's first decision that these might properly be obtained.

29. After the age of 21, the appellant might nevertheless have retained the status of his mother's family member, providing he was dependent upon her: regulation 7(1)(b)(ii) refers. In this respect, again, the evidence is lacking. What we do know, as a result of the evidence in the respondent's bundle and the additional P60 in his name, is that he undertook some sporadic work of his own in the years 2013-2019. We cannot assume, therefore, that he was dependent upon his mother after he turned 21, and there is no evidence to show that he was reliant upon her for his essential needs after that date.

30. In sum, therefore, we find that the appellant has failed to establish that he has at any stage acquired the right to reside permanently in the United Kingdom under the Regulations. He cannot show that he acquired that right as a worker or a student and he cannot show that he acquired it by being the family member of a qualified person for five continuous years. We conclude that he only has the basic level of protection against deportation. It is therefore for the respondent to establish that he represents a genuine, present and sufficiently serious threat to the fundamental interests of the United Kingdom: regulation 27(5)(c) of the 2016 Regulations refers.

(ii) The Level of Risk Presented by the Appellant

31. On any view, the appellant has an unedifying offending history, all of which we are required by regulation 27(5)(c) and paragraph 3 of schedule 1 to the 2016 Regulations to take into account. It is only if he presents a genuine, present and sufficiently serious to the fundamental interests of the UK that our enquiry need proceed any further: MC (Essa principles recast) Portugal [2015] UKUT 520 (IAC); [2016] Imm AR 114.

32. We have already made some reference to the appellant's antecedents above. His first conviction was in April 2013, for shoplifting. Further

convictions followed: robbery (November 2013), possession of cannabis ((August 2014 and August 2017), robbery (November 2017), failure to comply with a community protection notice (October 2018), commission of further offence during operational period of suspended sentence (February 2019), possession of cannabis (March 2019).

33. These convictions show, when taken together with the sentencing remarks of HHJ Sanders (who activated the suspended sentence of imprisonment in February 2019) that the appellant was a persistent offender with scant regard for the law. As HHJ Sanders noted, there were two breaches of the suspended sentence, which showed that the appellant had a 'very lax and questionable attitude towards the order'.

34. Had these earlier offences stood on their own, we might have been able to accept the appellant's evidence before us that he has changed his ways, grown up and decided not to commit further offences. As is apparent from the later PNC which was adduced by Ms Cunha's colleague, however, he has not changed his ways. Whilst these deportation proceedings were in train, he received a further conviction for the supply of a class A drug. He did not learn from the suspended sentence of imprisonment which was originally handed to him by HHJ Sanders. Nor did he learn from the activation of that sentence in the face of two breaches. Nor did he learn from the rehabilitative course which he took in 2019. Nor did the commencement of deportation proceedings against him act as any sort of brake on the appellant's offending.

35. The appellant was quite candid before us that his offending was motivated by greed. The offence of robbery involved taking £900 from a stranger in a park under threat of violence. The supply of class A drugs was similarly motivated. The appellant stated before us that he is now exploring a career in music and that someone is teaching him how to be a trader of 'gold and stuff'. There was no supporting evidence of any of this and we come to the clear conclusion that the appellant has not changed. It is only a matter of time before he returns to the behaviour he has exhibited for many years. We find that he represents a genuine, present and sufficiently serious threat to the fundamental interests of the United Kingdom.

(iii) The Proportionality of the Appellant's Deportation

36. By regulation 27(5)(a), any decision taken on the grounds of public policy, public security must comply with the principle of proportionality. The decision must, by regulation 27(5)(b) be based exclusively on the personal conduct of the person concerned. We confirm that we have only considered the personal conduct of the appellant and that other considerations which relate to matters of general prevention have been excluded from our contemplation, as required by regulation 27(5)(d). Nor have we concluded that the appellant's previous convictions might justify the decision to expel him from the United Kingdom. As required by regulation 27(5)(f) and the decision of the Court of Appeal in SSHD v Straszewski [2015] EWCA Civ 1245; [2016] 2 CMLR 3, we have borne rigorously in mind the need to look to the future. We have concluded, as above, that the appellant represents a future threat to the

fundamental interests of the UK and that the threat is genuine, present and sufficiently serious.

37. By regulation 27((6), we are required to balance against the threat to the United Kingdom a number of considerations which might militate against the appellant's deportation. Those factors, listed non-exhaustively in that regulation are the appellant's age, state of health, family and economic situation, length of residence in the UK, social and cultural integration into the UK and the extent of his links with Portugal. We consider those factors in turn.

38. The appellant is 26 and in good health. He told us that he lived with his mother at an address in East London. His mother gave a different account, stating that the appellant had been living with his girlfriend and her son since around December last year. We prefer the appellant's mother's evidence in this regard. The appellant continues to see his mother regularly but there is no family life between them which is protected by Article 8 ECHR.

39. As for the appellant's relationship with his girlfriend, there is very little before us. The only evidence we have of this relationship is the oral evidence given by the appellant and his mother. We accept that they are in a relationship and that he has been living with her and her son for a few months. Her son is a little older than the appellant's son, who turns three in October this year. The appellant's relationship with his girlfriend is still in its comparatively early stages; they are not engaged to be married and there are no children from that relationship. Given the length of the relationship and the paucity of evidence about it, we do not accept that the point has come at which the appellant has a family life with his girlfriend or with her son. We do not accept that it is in the best interests of the appellant's partner's son for the appellant to remain in the United Kingdom. There is no evidence before us to show that he has a parental role in his life, or to suggest that the appellant's partner would be unable to provide adequate care for the child in the absence of the appellant.

40. The appellant's relationship with his own son is rather more difficult but we consider the position to be as follows. It is clear from the papers from the Family Court that the appellant had only sporadic contact with his son for some time. He is noted in one of the reports to have failed to co-operate with the local authority's efforts to facilitate contact. As we have already recorded, it was envisaged by the Family Court that the appellant and his ex-partner (who suffers from very serious mental health problems) would have contact with their son three times a year. No order was made in that regard and the appellant is at liberty to see his son as frequently as he wishes. We think it more likely than not, given the consistent evidence we heard from the appellant and his mother, that the appellant sees his son a little more frequently than three times a year. The appellant said that he sees his son 'a bit' and that the lady with custody of the child is content for that to take place.

41. The appellant and his mother gave consistent evidence, which we have no reason to doubt, that they had recently taken the appellant's son

and his girlfriend's son to a trampolining venue called Flipout in East Ham.

42. Having considered all of the evidence before us, we consider the appellant to be an occasional presence in his young son's life. In law, he shares parental responsibility with the child's special guardian but we have no evidence nor any reason to think that the appellant has any meaningful role in the child's life. We conclude that he does not have a genuine and subsisting parental relationship with his son. We appreciate that the position in relation to a biological child is that they are deemed to enjoy a family life with their parent unless the contrary is established: Ciliz v The Netherlands [2000] ECHR 365, at [59]-[60]. Given the Special Guardianship Order, the appellant's lack of contact with his son whilst he was in prison, and his sporadic contact with the child before and after that point, we conclude that there is no extant family life between the appellant and his son.

43. We do accept that the appellant enjoys spending time with his son and that the feeling is probably mutual. It is more likely than not in the best interests of the child to continue seeing his father, although we take note of the likelihood that the appellant will continue to commit criminal offences and is unlikely, in our judgment, to represent a positive role model for his son in the future. Whilst we accept that it is in the child's best interests to retain some relationship with the appellant, we think that it is only marginally so, and this is not a significant counterbalance to the respondent's legitimate interests in preventing the commission of further crime by deporting the appellant from the United Kingdom.

44. The appellant's economic situation is unclear. We have no evidence other than his say-so about the mentor he has found, the musical career he is said to be developing, or the interest in trading 'gold and things' which he is said to be pursuing. We do not accept the rather vague suggestion that the appellant is or has been working in construction; were that the case, there would have been some evidence of it before us. We know from the appellant's mother's evidence that the appellant's girlfriend is in employment and we think it more likely than not that he is largely supported by his girlfriend. Given our findings about his propensity to commit criminal offences, it might also be the case that he is still involved in criminality. We have no evidence either way about that. What is appreciably clear is that the appellant is unlikely to have any significant reserves of money with which he could establish himself immediately in Portugal.

45. We have already found that the appellant has been in the UK since the later half of 2011. The evidence is insufficient to support the appellant's claim of having arrived earlier than that. He has therefore been in the UK for 11 of his 26 years. He has integrated to an extent, although the evidence of his schooling and employment history is either sparse or non-existent. He has a mother, girlfriend, son and step-son in the UK, although the extent of his wider connections is unclear. He certainly does not have the 'significant degree of wider cultural and societal integration required by paragraph 2 of schedule 1 to the 2016 Regulations. We consider it likely that he has more

connection to the UK than he does to Portugal, although (like the appellant) we consider that he will be able to re-integrate into life in Portugal before long. He lived there until he was sixteen. He must continue to speak the language, given the age at which he left and that his mother prefers to do so.

46. Drawing these threads together, we find that it is proportionate under the EEA Regulations to deport the appellant. His deportation will likely bring an end to his relationship with his son, his girlfriend and her son. That separation will bring about sadness and resentment but will not be strongly contrary to the best interests of either child. It will also mark an end to the relatively regular contact which the appellant has with his mother. It will also bring about some short-term hardship for the appellant, who will have to find work and adjust to life in Portugal. All of these consequences are fully justified, however, given the clear likelihood of the appellant committing further offences should he remain in the United Kingdom.

(iv) Article 8 ECHR

47. In addition to her decision to deport the appellant from the United Kingdom, the respondent made a decision that his deportation would not be in breach of his human rights. We therefore consider separately his submission that his deportation would be unlawful under section 6 of the Human Rights Act 1998 as being in breach of Article 8 ECHR. We are required by cases such as NA (Pakistan) v SSHD [2016] EWCA Civ 662; [2017] 1 WLR 207 to adopt a structured approach to that question.

48. The first question which arises is whether the appellant is a foreign criminal, as defined in s117D(2) of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act"). He has not been sentenced to a period of immediate imprisonment of more than twelve months and he has not committed an offence which has caused serious harm. On the findings we have made above, however, and bearing in mind the guidance given in R (Mahmood & Ors) v SSHD [2020] EWCA Civ 717; [2020] QB 1113, it is quite clear that the appellant is a persistent offender. We therefore proceed to consider whether he is exempt from deportation as a result of the private or family life exceptions set out at s117C(4) and (5) of the 2002 Act.

49. The appellant has not been present in the UK for most of his life. As construed in authority, the test in s117C(4)(i) is an arithmetical one and means nothing more than that a person has spent more than half of their life in the UK. This appellant has spent 11 of his 26 years in the UK.

50. In light of the findings we have made above, we do not consider the appellant to be socially and culturally integrated to the UK. He came to the UK as a teenager and has committed a series of criminal offences which tell against his integration to the UK. He has some relationships in the UK, as we have considered above, but there is very little evidence of academic or vocational integration since the appellant arrived in the UK more than a decade ago. He seems, instead, to have

lived on the periphery of society, committing offences in order to satisfy his thirst for easy money. Considering the guidance in CI (Nigeria) v SSHD [2019] EWCA Civ 2027; [2020] Imm AR 503, we do not accept that the appellant is socially and culturally integrated to the UK. His criminality militates against such a finding and there is scant evidence of meaningful integration to counter that pull.

51. Nor do we consider that the appellant would encounter very significant obstacles to re-integration to Portugal. We have made relevant findings in this regard above. Whilst we accept that he will naturally encounter some hardship in returning to Portugal, we do not consider that hardship to approach the level of severity required by s117C(4)(iii).

52. The appellant therefore fails to meet the first exception to deportation.

53. As for the family life exception, we do not accept, for the reasons we have given above, that the appellant enjoys a genuine and subsisting parental relationship with his son. We have borne in mind what was said at [86]-[102] of AB (Jamaica) v SSHD [2019] EWCA Civ 661; [2019] Imm AR 1126 in coming to that conclusion. For the reasons we have given above, however, we do not accept that the appellant's current relationship with his son engages Article 8 ECHR in its family life aspect, and we do not accept that his relationship with his son is one which can properly be characterised as a genuine and subsisting parental relationship. Contact is only sporadic and the child is the subject of a Special Guardianship Order.

54. The appellant's relationship with his girlfriend is not one which satisfies the test in s117C(5). There is very limited evidence of the relationship before us but we have heard the oral evidence of the appellant and his mother and we are prepared to accept that there is a relationship and that the appellant and his girlfriend cohabit. Plainly, however, that is insufficient. What is required by the subsection is a 'genuine and subsisting relationship with a qualifying partner' and we do not accept that the appellant's girlfriend can properly be described as his partner. Unlike in the Immigration Rules (paragraph Gen 1.2 of Appendix FM) there is no definition of the term 'partner' in section 117D of the 2002 Act. Section 117D(1) tells us that a qualifying partner must be either British or settled in the UK but the subsection provides no assistance on the meaning of the noun. We consider that it connotes a degree of permanency in the relationship. There is insufficient evidence of such permanency before us; there is no evidence of any description from the appellant's girlfriend, in particular.

55. Had we reached the opposite conclusion in respect of the appellant's relationship with his child or his girlfriend, we would in any event have concluded that the consequences which they would face in the event of his removal would not be unduly harsh, considering the construction of that test in HA (Iraq) v SSHD [2020 EWCA Civ 117; [2021] 1 WLR 1327, as more recently summarised by Simler LJ at 21[21]-[27] of MI (Pakistan) v SSHD [2021] EWCA Civ 1711.

56. There is nothing before us to suggest (let alone to establish) that the consequences for the appellant's girlfriend will even be harsh. In respect of the appellant's young son, we consider that the deportation of his father will, for him, be a matter of little or no real significance, to borrow from what was said by Underhill LJ at [157] of HA (Iraq). They have only occasional contact. It is to his special guardian that the child will turn, and not his largely absent father. He is still so young that he will very quickly adapt to life without his father.

57. In respect of either the appellant's girlfriend and his son, therefore, he is a very long way indeed from establishing that the consequences for them would be of a sufficiently enhanced degree to outweigh the public interest in the deportation of the appellant: MI (Pakistan) refers, at [23].

58. The appellant therefore fails to meet the statutory exceptions to deportation in every respect and what he must show, if he is to avoid deportation on Article 8 ECHR grounds, is that there are very compelling circumstances, over and above those in the exceptions to deportation, which suffice to outweigh the public interest in deportation: s117C(6).

59. The test in s117C(6) is a proportionality test, balancing the rights of the appellant against the public interest in his deportation. The scales are nevertheless weighted heavily in favour of deportation. Whilst the appellant has never received a lengthy sentence of imprisonment, and indeed falls beneath the statutory threshold for automatic deportation as a foreign criminal, we consider that there is a cogent and strong public interest in his deportation. That is not simply because we have found there to be a real risk of his committing future offences, it is also to deter other foreign nationals from committing crimes and to express the public's revulsion at such conduct: [38]-[44] of Zulfiqar v SSHD [2022] EWCA Civ 492 refers.

60. Against that cogent public interest in deportation, the importance of which is underlined in primary legislation, the appellant has a rather tenuous degree of private life in this country and no relationships which, on proper analysis, engage Article 8 ECHR in its family life aspect. There is nothing whatsoever on the facts of his case which suffices to outweigh the public interest in his deportation and we are obliged, therefore, to dismiss his appeal on human rights grounds.

Notice of Decision

The decision of the FtT having been set aside, we remake the decision on the appellant's appeal by dismissing it on all grounds.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

9 June 2022