Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00473/2019

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 29 April 2022	**On 19 May 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SARUJAN RAVEENDRAKUMAR
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: in person.
For the Respondent: Ms Young, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant, a citizen of France, was born on 3 February 2000.

2. The appellant arrived in the United Kingdom in August 2009 with his parents who applied for an EEA Registration Certificate with the appellant named as a dependant. On 28 March 2010 the Certificate was granted.

3. The appellant is the subject of an order for his deportation from the United Kingdom as a result of his criminality.

4. The appellant has been represented throughout the proceedings and a copy of the notice of hearing advising the appellant and his representatives, York Solicitors based at Ilford in Essex, of today's hearing was served by email upon the representatives and the appellant by post on 28 March 2022.

5. On 28 April 2022 the appellant wrote to the Tribunal Hearing Centre in Bradford in the following terms:

> "Sarujan raveendrakumar 03/02/2000
> Appeal No: DA/00473/2019
> Nationality : French
>
> I would like to get my court date adjourned as YORK solicitors isn't representing me anymore ,not only that I have received the court letter only 3 weeks ago, I have contacted a different solicitor but they need more time to understand my case as I only contacted closer to the court date."

6. The application was refuse for the following reasons:

1. There has been ample time to instruct other solicitors.
2. The application fails to identify when the appellant sought the assistance of another representative.
3. The application is not supported by correspondence from a representative agreeing to take the appellants case on.
4. The application fails to identify any issues in the case that cannot be justly determined unless a representative is appointed.
5. The Tribunals are very experienced in dealing with parties who are not represented. The appellant will be helped as far as possible at the hearing.
6. It is not made out the interests of justice require the adjournment to be granted.

7. There was no application to renew the request at the hearing and the procedure for the day was explained to the appellant who confirmed he understood the same. It was also confirmed by the appellant that the appointed interpreter was required for his parents as he speaks and understands English.

8. The appellant's appeal was previously allowed by a judge of the First-tier Tribunal who concluded the appellant was entitled to the highest level of protection under the Immigration (EEA) Regulations 2016 (as amended) on the basis of it being accepted that in addition to establishing a right of permanent residence in the UK the requisite 10 year period, entitling him to the "imperative ground" level of protection, had been made out. That decision was set aside by a judge of the Upper Tribunal on the basis the First-tier Tribunal had erred in law in a manner material to the decision to allow the appeal in finding that the requisite 10 year period had been made out.

9. The appeal returns to the Upper Tribunal today for it to consider the merits of the appellant's claim and to substitute a decision to either allow or dismiss the appeal.

The evidence

10. There is no dispute in relation to the appellant's immigration history or that of his family members which are set out in detail in their witness statements dated 1 November 2019 and a very helpful typed transcript of the evidence taken by the First-tier Tribunal Judge which, although that decision was set aside, stands as a record of what was said in evidence at the hearing in Nottingham on 1 November 2019.

11. There is also no dispute, on the face of the papers, to the appellant's offending history which shows that on 3 January 2017 at Bedford Magistrates Court he was convicted of possession of a knife blade/sharp pointed article in a public place for which he received a referral order of 4 months, was ordered to pay costs and a victim surcharge. On 21 January 2019 at Luton Crown Court the appellant was convicted of violent disorder and conspiring to cause grievous bodily harm with intent for which on the same day he was sentenced to 3 years imprisonment.

12. It is also not in dispute that although the appellant was initially detained in Bedford Young Offenders Institute, he was transferred to Lincoln as a result of his disruptive behaviour and fighting.

13. In his sentencing remarks His Honour Judge Bright QC records that the appellant was sentenced with a group of other named individuals. There is reference to the first indictment relating to a robbery in Luton on the evening of 18 February 2017 which does not appear to involve the appellant, but then to a second indictment in relation to which the Sentencing Judge states:

> The second indictment relates to two incidents of serious violence in the Hockwell Ring area of Luton. In the first incident to you, Ali, were the front passenger seat of a Skoda motorcar driven to the Hockwell Ring area of Luton by your co-defendant, Kevin Raveendrakumar. When you arrive you got out of the vehicle with two other occupants of the vehicle, one of whom was armed with a knife, and you chased two young men on bicycles in an - in a determined attempt to catch them. The incident was caught on closed circuit television and you can be seen to use a T-shirt in an attempt to conceal your identity.
>
> You and the other two men involved in the chase were wearing a blue surgical gloves, suggesting that you'd come prepared to ensure that you would leave behind neither fingerprints nor DNA, by which you might later be traced. The second incident happened shortly after the first and was also caught on closed circuit television footage. You continue to be the front seat passenger in the Skoda as it was driven by your co-defendant, Kevin Raveendrakumar, along a residential street on the edge of Hockwell Ring, when a young man called Rene Charlerie was on his bicycle and came into view.
>
> The closed circuit television footage has a soundtrack, unusually, and a gunshot can be heard offscreen, followed by a second shot, fired it is clear, from the rear of the Skoda, you being the front seat passenger. The target was clearly Rene Charlerie, who can be seen pointing what looks like an imitation handgun - it may even be a real one, but he, I gather, admits it was an imitation one - at the Skoda as the Skoda drives on. You, Ali, pleaded guilty on the second indictment to violent disorder, count 1; conspiracy to commit grievous bodily harm with intent, 3, and possession of a firearm with intent to endanger life.

You, Kevin Raveendrakumar, were convicted by a jury after a trial of two counts on the second indictment, namely violent disorder and conspiracy to cause grievous bodily harm with intent, and I now have to sentence you for those offences.

14. The Judge in the sentencing remarks also states "*It's not proven and I don't take too much note of it, but I can't ignore the fact that there may well be a gang background to the Hockwell Ring incident".*

15. This is not a retrial of the criminal proceedings and I note the appellant's honest reply when discussing this incident during the course of the hearing when he confirmed that the concerns of the Sentencing Judge were in fact correct, in that those involved in the matter which formed the second indictment were out to get the victim Mr Charlerie that night.

16. The Sentencing Judge also states "*You and your fellow passengers in the Skoda motorcar were involved in a planned attack on other young men, which involved weapons including a loaded shotgun brought to the scene to cause really serious bodily injury. The fact that the shotgun was twice discharged from a moving vehicle in a residential area, and in the direction of Rene Charlerie, demonstrates to me just how serious these offences were".*

17. In relation to the sentencing of the appellant HHJ Bright QC stated:

"I now turn to you, Kevin Raveendrakumar. You are the owner and - and at all times the driver Skoda motorcar, to which I've referred. The prosecution accept, however, that at no time did you get out of that vehicle, or, for that matter, have a weapon on you during either of the two violent incidents at Hockwell Ring. Although the jury, by their verdict, found that you were not one of those in joint possession of the loaded shotgun in the back of the vehicle, they found that you were party to the violent disorder and to the conspiracy to cause grievous bodily harm with intent.

Unlike your co-defendant, Faheid Ali, you are lightly convicted; you have only one conviction for having a bladed article. In your case I've read the presentence report prepared upon you, which rightly acknowledges that an immediate custodial sentence is inevitable, in your case, as it was in the case of Faheid Ali. However, it seems to me that you're not someone who even begins to meet the criteria for a finding of dangerousness, and, as I've already told your counsel, I don't find you to be a dangerous offender.

As I've already explained, the conspiracy of which you are convicted, as a category 2 offence under the guidelines, with a starting point of six years custody; because there is not the firearm for me to have regard to, I leave the starting point where the guideline puts it, at six years, in your case. It would have been different had the jury convicted you of the firearm offence, but I have to acknowledge the acquittal on that matter in the way I approach sentence on the conspiracy charge.

I take account of the fact that you were only 18 years of age, and the - have only that one conviction I've mentioned. I also take into account the very real mitigating factor: this is that you're someone who, on any view, has a supportive family and seemed to be making a good start in life, by commencing, but not quite completing an apprenticeship. Taking all those matters into account and, not least, the fact that you were the driver and never got out of the car, the least sentence that I can impose upon you is one of three years in a young offenders institution. There will be a concurrent sentence of 18 months for the offence of violent disorder.

Discussion

18. The first matter to consider is the level of protection to the appellant is entitled to in opposing the Secretary of State's decision to deport him from the United Kingdom.

19. By virtue of Regulation 27(3) of the 2016 Regulations a decision to remove may not be taken in respect of a person with a permanent right of residence under regulation 15 except on serious grounds of public policy or public security. By virtue of Regulation 27(4) a decision to remove may not be taken except on imperative grounds of public security in respect of an EEA national who (a) has resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision; or (b) is under the age of 18, unless the relevant decision is necessary in his best interests, as provided for in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989. The general approach is in two stages (i) does the Appellant's conduct satisfy the applicable "public policy" criterion (whether the general one or the more or most stringent one); and (ii) if it does, is the decision to remove a "proportionate" one in all the circumstances.

20. The appellant entered the United Kingdom on 13 August 2009 and was sentenced to a period of detention on 21 February 2019 prior to acquiring 10 years residence in the United Kingdom.

21. There have been a number of cases, in both the European courts and UK domestic courts, in relation to the assessment of the acquisition of the imperative grounds level of protection.

22. In Nnamdi Onuekwere v Secretary of State for the Home Department, Second Chamber, in Case C-378/12, on a request for a preliminary ruling from the Upper Tribunal it was held that Article 16(2) of Directive 2004/38 must be interpreted as meaning that the periods of imprisonment in the host Member State of a third-country national, (who is a family member of a Union citizen who has acquired the right of permanent residence in that Member State during those periods) cannot be taken into consideration in the context of the acquisition by that national of the right of permanent residence for the purposes of that provision. Article 16(2) and (3) of Directive 2004/38 must be interpreted as meaning that continuity of residence is interrupted by periods of imprisonment in the host Member State of a third-country national who is a family member of a Union citizen who has acquired the right of permanent residence in that Member State during those periods.

23. In AA (Nigeria) [2015] EWCA Civ 1249 it was said that the acquisition of a right of permanent residence was dependent upon a sufficient degree of integration into the host Member State and, once a right of residence had been acquired, it may only be lost through absence from the host Member State for a period exceeding

two consecutive years. Article 16(4) could not sensibly be interpreted as extending by implication to a period of imprisonment, even though such a period did not count towards the residence required for the acquisition of a right of permanent residence in the first place.

24. On the question of the acquisition of 10 years imperative grounds protection, in Land Baden-Württemberg v Tsakouridis (Case C-145/09) CJEU (Grand Chamber), 23 November 2010 in which The Grand Chamber held that the decisive criterion for granting enhanced protection under Article 28(3)(a) was whether the Union citizen had resided in the host Member State for the 10 years preceding the expulsion decision. The national authorities responsible for determining that question were required to take into account all relevant considerations in each particular case, in particular the duration of each period of absence from the host Member State, the cumulative duration and frequency of those absences and the reasons why the person left the host Member State.

25. In relation to the enhanced protection of imperative grounds against deportation, in SSHD v MG Case no c-400/12 CJEU second chamber it was held that unlike the requisite period for acquiring a right of permanent residence which began when the person concerned commenced lawful residence in the post Member State, the 10 year period of residence necessary for the grant of the enhanced protection provided for in Article 28(3)(a) must be calculated by counting back from the date of the decision ordering that person's expulsion. All relevant factors should be taken into account when considering the calculation of the 10 year period including the duration of each period of absence from the host Member State, the cumulative duration and the frequency of absences. A period of imprisonment was in principle capable both of interrupting the continuity of the period of residence needed and of affecting the decision regarding the grant of enhanced protection provided there under, even where the person concerned had resided in the host member state for 10 years prior to imprisonment albeit that the fact that the person had been in the member state 10 years prior to imprisonment was a factor to be taken into account.

26. In Warsame [2016] EWCA Civ 16 it was held that in Secretary of State for the Home Department v MG (Portugal) (Case C-400/12) it was established that the ten year period of residence required to benefit from the enhanced protection of imperative grounds must in principle be continuous and be calculated by counting back from the date of the deportation decision. The Court of Justice of the European Union (“CJEU”) found that, in principle, periods of imprisonment interrupted the continuity of periods of residence for the purposes of granting the enhanced protection. However, the CJEU also held that claimants could still qualify for enhanced protection if they could show that they had resided in the UK during the ten years prior to imprisonment, but that depended

on an overall assessment of whether integrating links previously forged with the host Member State had been broken. On the facts, because of an earlier period of imprisonment which also broke continuity, this appellant one of those in the narrow "maybe" category of cases contemplated in MG (Portugal)where a person has resided in the host state during the ten years prior to imprisonment, for which a more detailed individual assessment of links to the host and home state would be required.

27. In Vomero [2016] UKSC 49 the Supreme Court referred to the European Court of Justice the question whether enhanced protection against deportation under Directive 2004/38 art.28(3)(a) depended on an EU citizen's possession of a right of permanent residence within art.16 and art.28(2). It further asked how the time period under which enhanced protection could be acquired was to be calculated. The CJEU decided (C-316/16 and C-424/16) that it was necessary for the EU citizen to have a right of permanent residence to benefit from the 10 year protection. They clarified that the 10-year period does run back from the date of the expulsion decision but where a Union citizen had already resided in the Member State for 10 years before detention that did not automatically mean that the person was deprived of the benefit of the enhanced protection. An overall assessment of the person's situation may lead to the conclusion that notwithstanding the detention, the integrative links between the person and the host Member State have not been broken. Those aspects include the strength of the integrative links forged before detention, the nature of the offences which resulted in detention, the circumstances in which the offence was committed and the conduct of the person during the period of detention.

28. The EEA regulations were amended to clarify that a permanent right of residence is needed for the 10 year protection to be available, which it is not disputed the appellant has acquired.

29. The date of the deportation order in this appeal is 30 August 2019 which on a simple mathematical calculation would mean the appellant had acquired the necessary 10 year period of residence but that is not the appropriate way in which that assessment should be made. Whilst it is not disputed that the appellant may have acquired close to 10 years qualifying residence in the UK before he was sentenced and that the time spent in prison did not 'stop the clock', but the chronology confirms that the necessary 10 year period had not been acquired before his conviction and sentence. The appellant has therefore not acquired the necessary <u>continuous</u> period of 10 years.

30. Detention in a young offender's institute does not count positively towards establishing 10 years residence – see Hafeez v Secretary of State for the Home Department [2020] EWCA Civ 406 in which it was confirmed at [39] that imprisonment presses a pause button on the accrual of residence. The effect of which upon this appellant is that that leaves him around six months short of the required 10 year period.

31. As noted in the error of law decision, the position of this appellant is therefore very similar to that of the appellant in Hafeez with the question of whether the appellant's integrative links have been broken not arising as he has not acquired the requisite 10 year period in any event.

32. There was however discussion with the appellant at the hearing in relation to his reasons for his offending which led to his imprisonment and his attitude towards the norms of society and the laws of society in the UK in general, which disclosed a flawed pattern of thinking in which the appellant effectively stated that it is what he and his friends wanted to do that was important rather than what the law permitted or prevented him from doing, and/or what he was expected to do based upon the values instilled upon him by his family or society in general, and the integrative links he had formed in the UK.

33. After leaving school the appellant worked and he confirmed he had very little input with his family. Indeed it remains the case that this still the position today as the appellant has, since release, resided at an address in Doncaster, South Yorkshire, whilst his parents remain in the family home in Luton although they visit him and the family did attend the hearing with his mother and father available to give oral evidence if required, although they were not called.

34. Had the question of the integrity of links formed required discussion at this point, and whether they had been broken, it would have been my finding that those links were clearly broken on the evidence and that the level of protection to which the appellant is entitled is that based upon his acquisition of a permanent right of residence, namely the middle level of serious grounds of protection against expulsion pursuant to regulation 27(3) referred to above.

35. In relation to the question of the fundamental interests of society, in GW (EEA reg 21: 'fundamental interests') Netherlands [2009] UKAIT 00050 the Tribunal said that the 'fundamental interests' of a society within the meaning of reg 21 (a threat to which may justify the exclusion of an EEA national) is a question to be determined by reference to the legal rules governing the society in question, for it is unlikely that conduct that is subject to no prohibition can be regarded as threatening those interests.

36. The 2016 regulations (schedule 1 para 7) set out what the fundamental interests of society in the UK include namely preventing unlawful immigration and abuse of the immigration laws and maintaining the integrity and effectiveness of the immigration control system including under the regulations and of the common travel area, maintaining public order, preventing social harm preventing the evasion of taxes and duties, protecting public services, excluding or removing the EEA national or family member of an EEA national with a conviction (including where the conduct of that person is likely to cause, or has in fact caused, public offence) and maintaining public confidence in the ability of the relevant authorities to take such action, 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), combating the effects of persistent offending, protecting the rights and freedoms of others, particularly from exploitation and trafficking, protecting the public, acting in the best interests of a child, countering terrorism and extremism and protecting shared values.

37. In BF(Portugal) v SSHD [2009] EWCA Civ 923 the Appellant, a citizen of Portugal, had acquired permanent residence. He was convicted of battery against his partner and sentenced to 42 months imprisonment. He could only be removed on serious grounds of public policy or public security. The Tribunal first had to determine the claimant's relevant personal conduct; secondly whether the conduct represented a genuine present and sufficiently serious threat; thirdly whether that threat affected one of the fundamental interests of society; and fourthly whether deportation would be disproportionate in all the circumstances. The Tribunal noted the evidence that the claimant had a high propensity to re-offend against the same victim and any new partner, but went on to find that the SSHD had failed to prove that there were serious grounds of public policy or security which made deportation proportionate. In remitting the appeal, the CA said the Tribunal should have reached a conclusion as to whether the threat, which was clearly present at the time of the offence, was still present at the hearing. The Tribunal had to decide whether there was a present serious threat and if so the extent of that threat.

38. Considering the four questions posed by the Court of Appeal in BF I find as follows:

39. In relation to the appellant's relevant personal conduct; his role in the events that led to his imprisonment and his earlier conviction for possessing a bladed instrument is set out above. A jury of the Crown Court found the appellant culpable for the offences which formed the second indictment. The appellant before the Upper Tribunal repeated his claim that he was brought up in Luton where at times he was scared and that although he was not in a gang the people he associated with were in a gang, and that the events which led to the offending was a gang issue.

40. For many Britons, a "gang" means a group of teenagers involved in petty crime, or graduating to selling drugs, stealing phones and even stabbing other young people from rival postcodes. It also appears to be an issue, despite gang related killings being recorded in cities such as London and elsewhere and police attempts to disrupt gangs, to be a problem that is not going away. Even if the appellant was found not guilty in relation to the shotgun itself it is clear he was aware of and associated himself with the actions of those intent on undertaking the gang-related activity on the day. The use of a firearm indicates considerable escalation of offending on this occasion.

41. In addition there is evidence of the appellant fighting in prison such that it was necessary to remove him from where he was originally imprisoned to Lincoln. The appellant refers to difficulties experienced in the Young Offenders Institute but appears to have resorted to acts of violence such that it was felt necessary to remove him.

42. It is accepted there is no evidence that the appellant has offended since his release on licence which will be for a period equal to half his sentence or whilst faced with the prospect of his deportation hanging over him. There is within the papers an OASys report dated 4 July 2019. In section 2.11 in which the author of the report considers whether the appellant accepts responsibility for the offence it is written:

> Mr Raveendrakumar behaviour in this offending is questionable at best, which he accepts. He had initially driven a vehicle without appropriate insurance, allowing what he says is unknown males into his vehicle and driven allegedly on command to an area and then allowed Mr Ali and the others back into the vehicle. He accepts that having been found guilty the Courts view will be that he was fully aware of the pending situation of group violence against others and that he was part of the planning as well as the action. I note that he was not seen to exit the vehicle, however this does not minimise his involvement in the matter as he was driving the vehicle and afterwards he drove Mr Ali back to his home. There are levels of sophistication around this offending where Mr Raveendrakumar has used his own vehicle and clearly there was illegality's around the vehicle, in relation to insurance, he did not seek to dispose of this and the vehicle was found and forensically searched near his home. I acknowledge that Mr Raveendrakumar does not seek to minimise the impact of such offences, discussing with me the impact of potential loss of life, the public remaining fearful of such actions and furthermore impact of such actions are himself and his family.
>
> In my view the following are the aggravating features in this offending.
>
> 1. This was a group action where the males had driven to an area with the clear intention was to cause serious harm to others.
> 2. weapons were used against other group - although I note that the conviction for possession of a weapon was not a convicted offence.
> 3. This occurred at around 6 PM, therefore still a busy time of day.
> 4. This offence took place in a busy residential area and there was potential further harm being caused to indirect victims.
> 5. This was clearly a premeditated and preplanned action towards others.
>
> Mr Raveendrakumar denies having any role in the planning of the execution of this offending. He has been found guilty of conspiracy to cause grievous bodily harm with intent, and therefore I can only assume that Mr Raveendrakumar is not detailing the full version of events and in my view, he is clearly minimising the extent of his offending. He identifies that he should be more careful about who he socialises with and the decisions that he makes. This is an area Mr Raveendrakumar needs to explore further by participating in the offence focused work and to reduce the risk he is currently presenting, to avoid repeat of this behaviour in the future.
>
> I understand from witness statements that there was damage to one property by the shots fired. Furthermore, reports from members of the public who have provided accounts of this incident occurring in their local area. There is no question that this would have had an impact on local residents who have witnessed this and the potential harm such offending could cause.

43. In relation to whether there was a pattern of offending it is written at 2.12:

> Mr Raveendrakumar has a 1 previous conviction for possession of a knife when aged 16 in a public place. This offence led to a referral order being made at Bedford Magistrates Court. Mr Raveendrakumar states that he was out with friends and saw this knife and place this in his trousers as he knew that there were issues with violence in Luton and he carried it for his protection. I think it is important to note that Mr Raveendrakumar was 16 years at the time and therefore his version of events does not hold up to scrutiny. I question his level of maturity and understanding of the long-term consequences. It could also be said that his level of maturity was a factor in his current matters. The only concern I have with this statement is that Mr Raveendrakumar, as will be read below, has detailed a very stable and productive lifestyle regarding family and employment and the offences appear to be out of character for him. However, it cannot be ignored that the current offences are a significant escalation of risk of serious harm to the public and that weapons have featured alongside violent and aggressive behaviour within his convictions. This will be of concern to the Court and only highlights that the protective factors that are present offending.

44. In relation to lifestyle issues contributing to risk of offending and harm, section 7 of the report has identified that there are some problems with the appellant's regular activities encouraging offending, significant problems relating to the appellant been easily influenced by criminal associates, some problems relating a manipulative /predatory lifestyle, and significant problems in relation to the appellant's recklessness and risk-taking behaviour. In that section it is written:

> Mr Raveendrakumar states that in the community he has generally kept himself away from any negative associations and denies being part of any gang related activities. He reports, that he has struggled with being of good behaviour in prison, stating that other prisoners "try and take the piss out of you" and he feels he needs to fight to manage this. He identifies that this does not solve the issue, however in his view it clearly allows him to gain respect and potentially deter others from trying to do the same to him. He states that he does not speak to Prison Officers about this behaviour or develop alternative ways to manage and solve this situation, which clearly will result in jeopardising the prison rules. Consequently, the concern is that this can only lead to consequences around adjudications and potentially further offences being recorded.
>
> Mr Raveendrakumar current offending behaviour indicates that although he describes positive employment and relationships in his community, his behaviour with associates is worrying and clearly played a significant part in this offending. He has taken part in serious offending against others, and although he denies being part of any planning or knowing of the other males including Mr Charlery, the actions he has displayed clearly indicate otherwise. This will need to be explored further to enable this risk to be tackled.
>
> I have received information from HMP Bedford which confirms that currently Mr Raveendrakumar is placed on the segregation unit and there have been significant concerns with a lack of adherence to prison rules and violent acts being perpetrated. When I interviewed Mr Raveendrakumar he was according to his records on the segregation unit and did not disclose this. I was unable to challenge this as I received his records post this interview. However, I am not clear on why he would not inform me of this. This behaviour in prison is of high concern due to this displaying ongoing evidence of violent and aggressive behaviour this will also need

to be tackled alongside his community risks. Overall, it is clear that Mr Raveendrakumar is using violence to solve problems rather than finding different avenues of solutions.

45. It is recorded that the appellant admitted smoking cannabis but claimed that this did not contribute to his offending and that he could not recall whether he had smoked cannabis on the day and denied consuming alcohol at all.

46. The author of the report indicates that although the appellant does not accept his full guilt, he has acknowledged that he has made decisions that have and will have affected his life, and that it was stated to be vital that whilst in prison the following be explored regarding his sentence:

1. Thinking and behaviour by an accredited programme
2. victim awareness and impact
3. exploration around his lifestyle and associates
4. building his protective factors and understanding around offending behaviour, who would desist him from further offending.
5. Partake in prosocial activity and find alternative ways to manage socialisation in the prison setting
6. start communicate with professionals about his decisions and provide evidence of a change of attitude.

47. In assessing the question of risk of serious harm it is recorded that there are concerns about control and disruptive behaviour as noted above. In section 10 of the report the following is written:

R 10 Summary

R 10.1
Who is at risk

1. public: I would assess the risk to the public at a high level. The aggravating features as highlighted throughout this report only indicate that Mr Raveendrakumar is willing and able to perpetrate significant levels of violence with others to send a message and the risk of harm that could be caused. His thinking and behaviour of will require challenging to tackle the risks he poses and understand further what the triggers and thought processes that have led to this. Of course, it cannot be ignored that there was violence with weapons, although I acknowledge that the possession of a firearm offence was not a convicted count. However, it cannot be ignored that Mr Raveendrakumar has a previous weapon offence in 2017, with the current offences being an escalation.
2. Staff in prison: I acknowledge the reported use of aggressive and violent behaviour in prison and therefore, there is an indirect risk to staff from such incidents that requires monitoring. I would assess this risk at a medium level, although this could quickly move to high if this behaviour continues.
3. Prisoners: I have highlighted above the information received from HMP Bedford that details concerns with his behaviour towards other prisoners. Mr Raveendrakumar is self reporting using violence to manage alleged behaviour towards him which can only be an added concern and therefore this area of risk cannot be assessed anything lower than medium. Again, if this behaviour continues I would assess this moving to a high level.
4. Children: Mr Raveendrakumar reports that he has 3 siblings under the age of

17 years. Checks are being conducted with Luton Multi Agency Safeguarding Hub (MASH) and as of yet no response has been received. Following a response from the MASH team, a review of this assessment will be required. At this present juncture I would assess the risk to children at a medium level which is due to the current offending, which occurred in a public place with no thought to who were present and who could be harmed directly or indirectly.

5. Known adults:. With these types of offences I think it is important to acknowledge that there is a risk in prison with other known associates, whether they be on his side of the offence or the opposite. At present I have identified that Mr Ali, his co-defendant is still an associate and Mr Charlery is clearly not, although Mr Raveendrakumar states that he does not know him. Therefore, it will be key that the prison manage the whereabouts of the named persons to manage any potential risk of re-occurring violence. The risk known adult has to be assessed at a high level.

R 10.2
What is the nature of the risk

That he will with others perpetrate significant violence to send message to others with little regard to others.

That he will continue to solve problems in the prison setting with violence.

That he will carry weapons.

R 10.3

When is the risk likely to be greatest
Consider the timescale and indicate whether risk is imminent or not. Consider the risk in custody as well as on release

When he feels that he has been placed in a situation that he needs to protect himself and others that he is with

I would assess the risk is height to the public and known adult.

There is also the concern that he does not admit that he knew about this offending prior.

48. The appellant is therefore assessed as posing a medium risk to children in the community, a high risk to members of the public in the community, a high risk to known adults, and a low risk to staff in the community set out at 10.6 of the report.

49. The bundle also contains a document from the National Offender Management Service entitled OASys Guidance provided as an aid to interpreting OASys the information. In relation to risk of serious harm it is written:

In the case of a serving prisoner, the assessment of Risk of Serious Harm is based on the following:

- Identified controls are in place at the time of release into the community, most typically through the licence; and
- the Offender Manager monitoring the offender’s compliance with these controls on an ongoing basis until the sentence and date.

…

> It is vital to remember, therefore, that all assessments take into account the likelihood of a further offence occurring and the level of impact of that harm should an offence occur. An assessment category of Risk of Serious Harm will be dependent on the controls or restrictions in place. Thus, where an offender is assessed using OASys as presenting a Low Risk of Serious Harm, it does not necessarily mean that the offender presents with no significant current indicators of risk to members of the public or other individuals. The risk of serious harm is only considered to be low in the community if the appropriate controls are in place to manage and monitor the offender throughout and can be acted on to reduce harmful behaviours occurring. The assessed risk of serious harm level is therefore only relevant for individuals who remain under probation management; it would not be a valid estimate of the risk presented by an ex-offender who was no longer in custody or subject to probation management.

50. The appellant also admitted during the course of our discussions that he had a previous occasion taking his mother's car and driven it without her permission without insurance.

51. In relation to the second question, whether the conduct represented a genuine present and sufficiently serious threat; I find it made out on the basis of the appellant's conduct, the assessment of risk, and the fact that since his release from prison and when he is outside the management of the probation service there was no evidence of anything of merit being done to try and deal with the aspects of the appellant's personality that led to him behaving as he did in the past, he represents a genuine present and sufficiently serious threat. I appreciate what the appellant has said about his intention not to reoffend, but that behaviour was clearly based upon an underlying personality issue as identified by the probation officer. That the appellant has very supportive family is recognised but the strong foundation of his family did little or nothing to deter him from his offending behaviour. I find it has been established that the appellant still poses a genuine and present threat that he would commit further offences.

52. The third issue is whether that threat affected one of the fundamental interests of society; as the threat is of physical violence directly or by the use of weapons, both of which are illegal under the laws of the United Kingdom, I found it made out that the threat posed by the appellant will affect one of the fundamental interests of society.

53. In relation to the fourth issue, whether deportation will be proportionate, this requires consideration of the issue of rehabilitation.

54. The appellant argued that he has no connection to France and that it would be impossible for him to be returned to France but claim to have no knowledge of the French language is without merit. The appellant was born in France, would have attended school in France, and only arrived in the UK aged eight. His claim not to have any knowledge of the language was exposed by Ms Young by reference to the fact the appellant had obtained a GCSE in French. Whilst it is appreciated that French has not been the primary language the appellant used in the United Kingdom he has not made out that he would not have sufficient knowledge to enable him to get by whilst his vocabulary and general use of French improved. It was not made out

that if the appellant required assistance from the authorities in France, which as a French citizen he would be entitled to, they would not be able to assist him by the provision of an interpreter. France is a multi cultural state where a lot of the population, in any event, speak English.

55. As noted by the First-tier Tribunal, the appellant is a fit and healthy male, not receiving any medical or health interventional medication, has lived a lifestyles and in an environment similar to that in France, he could be visited by the UK-based family in France, he has the ability to work or to find work and his own accommodation, and has not provided any reason why he could not study and improve his French language abilities. There is a cousin of his father in France and although the appellant alleges that relationships with that individual have soured and that they are not on speaking terms, it is not made out that such a relative could not be contacted or would be unwilling to assist the appellant in re-establishing himself in France if required. The appellant has not shown he cannot establish himself even if his father's cousin is unwilling to provide assistance.

56. In terms of rehabilitation, there is insufficient evidence the appellant has undertaken required courses, including anger management, or any other courses required to deal with those areas of concern identified in the OASys report, and nor has he established that he would not be able to access similar services in France if required. There is insufficient evidence from the appellant to show he is required to remain in the UK for the purposes of rehabilitation.

57. I accept that the appellant's ties to the UK are far stronger than those that he has France and his parents, siblings, friendship groups and family are in the UK, but it was not made out that there will be any breach of EU law in terms of preventing family members from exercising and continue to exercise their treaty rights in the UK if the appellant is deported. It is not made out when considering the facts very carefully that any disruption with the appellant's right of free movement is disproportionate to the legitimate aim relied upon. The real risk combined with the consequences of the appellant's further offending indicate a very strong case in favour of the public interest.

58. I therefore find that Secretary of State has established that the requisite threshold has been crossed and that it is in accordance with European law and the terms of the 2016 Regulations and Directive that the appellant be deported from the UK to France.

Decision

59. I dismiss the appeal.

Anonymity.

60. 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 13 May 2022