IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003718

First-tier Tribunal No:
EA/50669/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 13 November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

SANJEY SUBRAMANIAM
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P. Saini, Counsel instructed by Reiss Edwards
For the Respondent: Mr E. Tufan, Senior Home Office Presenting Officer

Heard at Field House on 18 October 2023

DECISION AND REASONS

Introduction

1. The Appellant appeals against the decision of First-tier Tribunal Judge J Bartlett (hereafter "the Judge"), dated 23 February 2023, which dismissed the Appellant's appeal against the Respondent's decision to refuse his human rights claim against the earlier notice of intention to deport him to Germany, dated 29 March 2022.

2. Permission to appeal was granted by First-tier Tribunal Judge Karbani on 5 September 2023 with no limitation to any of the grounds pleaded.

The relevant background

3. The relevant background is as follows:
    a. The Appellant has an extensive history of criminality in the United Kingdom: according to para. 3 of the decision under challenge, the Appellant was convicted for robbery and attempted robbery on 10 December 2010 which led to a sentence of imprisonment of 16 months at a Young Offenders Institute.
        i. Later, the Appellant received a suspended sentence of 15 months imprisonment for aggravated vehicle taking, on 11 January 2013.
        ii. On 8 April 2014 he was sentenced to 335 days imprisonment for driving a vehicle whilst uninsured.
        iii. On 9 December 2019 he was convicted of handling stolen goods and sentenced to 42 months imprisonment.
    b. On 16 September 2019, the Respondent issued the Appellant with a notice of liability to deportation under the 'Immigration (European Economic Area) Regulations 2016' ('the 2016 EEA Regulations') on the basis of his conviction dated 9 December 2019 which led to the subsequent sentence of 3 years and 6 months imprisonment. The Respondent also referred to the Appellant's seven convictions for offences in the United Kingdom between 10 December 2010 and 24 May 2016.
    c. On 24 June 2021, the Appellant made an application for Leave to Remain under Appendix EU of the Rules which has yet to be decided by the Respondent.
    d. According to the chronology in the Appellant's skeleton argument before the First-tier Tribunal, he was released on bail on 28 September 2021 (see para. 11).
    e. On 22 March 2022, the Respondent refused the Appellant's representations as a refusal of human rights claim. Within that decision, the Respondent also sought to apply the terms of the '*Citizens*' *Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020'* (hereafter the 'Grace Period Regulations') and concluded that the Appellant had not established that he had the requisite type of lawful residence under the 2016 EEA Regulations prior to 31 December 2020, (11pm).

The decision of the Judge

4. At para. 2(iii) the Judge noted a preliminary issue raised in the Appellant's skeleton argument as to whether the Appellant had access to an appeal under the 2016 EEA Regulations as well as his human rights appeal. The Judge concluded that there was no such right of appeal on the basis that

reg. 36 of the 2016 EEA Regulations requires that there is an 'EEA decision' as defined within those Regulations and found that there had been no such decision in these proceedings.

5. In coming to that conclusion, the Judge made the following finding: "*it is not disputed that the Appellant has never applied for a residence card and the Respondent has not made a decision about a residence card application or decision to deport under the EEA Regulations*".

6. In the same paragraph, the Judge recorded that Ms Staunton (Counsel on behalf of the Appellant at the First-tier Tribunal) conceded that there was no EEA decision and therefore no right of appeal under the 2016 EEA Regulations.

7. The Judge therefore went on to decide the Article 8 ECHR appeal.

8. At para. 11, the Judge made reference to the earlier Upper Tribunal decision of Judge Eshun (from 2012) and noted that there was no suggestion during those proceedings that the Appellant had acquired a permanent right of residence in the United Kingdom under the EEA Regulations. The Judge nonetheless considered the evidence and arguments before her and concluded in the following way:

    a. The Judge found that the Appellant's periods of imprisonment (as I have laid out above) broke any continuous periods of residence. The Judge further found that it was very difficult for the Appellant to establish that he had acquired a right of permanent residence under the EEA Regulations.

    b. In the same paragraph, the Judge found that it was unclear when it was that the Appellant was released from his 335 days sentence and therefore he had not established a five year period of lawful residence between 2014 and December 2019.

9. At para. 12 the Judge also found that the Appellant had not established that he was exercising Treaty rights during the financial year 2018-2019; deciding that his income of £2600 was so low that he was not in fact a worker or self-employed person during that particular period.

10. The Judge then sought to apply the mandatory terms of s. 117C(4) of the NIAA 2002. In doing so she made the following findings:

    a. The Appellant entered the United Kingdom at some point in 2006 when he was 15 years old and therefore at the date of hearing claimed to have been resident in the UK for around 16½ years. The Judge considered Ms Staunton's submission that the Appellant would not have been in prison for the entirety of his various sentences but concluded that the most the Appellant could have been lawfully resident for was around 14 years which was less than half of his life, (applying s. 117C(4)(a)) at para. 18.

    b. At paras. 19 to 24, the Judge assessed whether the Appellant was socially and culturally integrated in the United Kingdom in accordance

with s.117C(4)(b). The Judge noted the Appellant's length of residence in the United Kingdom, his partner in the UK, his family and his previous work but ultimately found that the nature of the Appellant's frequent offending in the United Kingdom meant that the Appellant had not established that he was genuinely socially and culturally integrated.

c. At paras. 25 to 26, the Judge also decided that there were no very significant obstacles to the Appellant's reintegration into Germany for various reasons including that the Appellant spent the first 15 years of his life there, he attended school there and was educated. The Judge also concluded that the Appellant could adapt to any language issues, (para. 25(iv)).

11. In respect of s. 117C(5), the Judge accepted that the Appellant had established that he has a genuine and subsisting relationship with his partner (para. 29(i)) and that she is a British citizen but concluded that overall the disruption to the partner's circumstances in the United Kingdom, as well as the prospects of adapting to life in Germany, did not lead to unduly harsh consequences, (para. 30).

12. At para. 32, the Judge also concluded that it would not be unduly harsh for the Appellant to be separated from his partner and that they could maintain the relationship via visits.

13. In applying s. 117C(6), the Judge weighed up the factors in favour of the Appellant and in favour of the public interest when assessing very compelling circumstances over and above the exceptions in the statutory scheme under Article 8(2). The Judge concluded that the Respondent's decision was a proportionate one, at para. 37. The Judge dismissed the Appellant's appeal.

The error of law hearing

14. It was acknowledged by both representatives from the outset that the legal issues in this appeal are relatively novel and as such the nature of the proceedings were somewhat discursive. I should note however that I am grateful for both representatives' assistance with the legal issues at the heart of this appeal.

15. I should also indicate that Mr Saini helpfully narrowed the relatively broad-brush nature of the challenge as drafted in the grounds of appeal by Ms Staunton and I have therefore decided to use Mr Saini's submissions as the main basis for my assessment of the Appellant's appeal.

Ground 1:

16. I start by noting that Mr Saini agreed that the terms of the Grace Period Regulations applied in this case. He referred the Tribunal to the Respondent's guidance, entitled 'Conducive deportation' (version 2.0 – 8 June 2023) at page 8:

"Where an EEA citizen or their family member has been sentenced to a period of imprisonment, and they have not acquired leave under the EUSS and do not have leave by virtue of arriving in the UK with an EUSS Family Permit, if you are considering making a deportation order in relation to their conduct committed before 23:00 on 31 December 2020, you must ensure you apply the correct threshold when considering whether to make a deportation decision.

As with all deportation decisions concerning EEA citizens and their family members who have not acquired leave under the EUSS or leave by virtue of arriving in the UK with an EUSS Family Permit, you must ascertain whether there is a pending EUSS application awaiting a determination. If it is confirmed there is a pending EUSS application, then you must also ascertain whether they were residing in the UK in accordance with the EEA Regulations 2016 or had acquired a right of permanent residence immediately before 23:00 GMT on 31 December 2020. For more information, see EEA nationals: qualified persons.

If they were serving a sentence of imprisonment immediately before 23:00 GMT on 31 December 2020 then, unless they had acquired a right of permanent residence prior to their imprisonment, they will not have been residing in the UK in accordance with the EEA Regulations 2016 and the conducive deportation threshold will apply to them.

If they had acquired a right of permanent residence and have conduct committed before 23:00 GMT on 31 December 2020, you must apply the public policy or public security test, as set out in regulation 27 of the EEA Regulations 2016. For more information, see public policy, public security and public health decisions."

17. Mr Saini then referred me to the Respondent's decision at paras. 9 – 12 in which the decision-maker had concluded that the Appellant had not established that he was lawfully resident in the UK as at 11pm on 31 December 2020 under the 2016 EEA Regulations.

18. In summary Mr Saini advanced **four propositions**:

    a. That the Respondent's rejection of the Appellant's claim to have been lawfully resident under the 2016 EEA Regulations at the relevant time and date had the hallmarks of an *EEA decision* for the purposes of the relevant definition in the 2016 EEA Regulations; he therefore contended that an appeal under the 2016 EEA Regulations was available to the Appellant, contrary to the view taken by the Judge at para. 2(iii).

    b. In addition, the nature of the Respondent's decision was best characterised as a "hybrid decision" which also required consideration of the 2016 EEA Regulations. Mr Saini relied upon para. 9(d) of the Appellant's grounds of appeal in which it is argued that if the Appellant could show prior permanent residence or "ten years continuous residence" then he would not be a *foreign criminal* for the purposes of ss. 32 & 33 of the UKBA 2007 as he would fall under the exception in s. 33(6C) of the same Act with reference to s. 33(7).

c. Thirdly, he argued that the appeal to the Tribunal could not be a "*strict human rights-centric*" appeal and must incorporate the threshold tests for deportation in the 2016 EEA Regulations. Counsel submitted that the Judge therefore erred by looking at the matter purely through the prism of human rights.

d. Fourthly, the non-hybrid decision/appeal approach leads to a "bizarre" situation in which the Respondent is able to decide that reg. 27 of the 2016 EEA Regulations should not apply and thereby deny the Appellant a vehicle by which to challenge the deportation under the 2016 EEA Regulations.

Ground 2

19. In respect of this ground, Mr Saini argued that the Judge had ignored the Appellant's submission that he would have been released at approximately the beginning of April 2014 after serving half of his sentence of 335 days imprisonment and that therefore the Judge erred in her rejection of the Appellant's assertion that he had resided lawfully in the United Kingdom under the EEA Regulations for a five year period between 2014 and the 2019 (when he was then imprisoned for his last conviction).

Ground 3

20. Mr Saini accepted that the focus of the Appellant's case was really whether the Appellant had established that he had achieved a permanent right of residence in the United Kingdom. Mr Saini also relied upon the contention in the grounds at para. 23, that the Judge had materially erred in not assessing the Appellant's case that he had achieved 10 years continuous residence (by showing that he had sufficient integrative links to the United Kingdom despite his periods of imprisonment).

Ground 4

21. Mr Saini emphasised the points made in paras. 24 to 25 of the grounds and argued that the Judge materially erred in not taking into account the Appellant's low risk of reoffending when assessing his cultural and social integration in the United Kingdom.

Ground 5

22. Mr Saini argued that the decision of Judge Eshun (from 2012) established that the Appellant had entered the United Kingdom in January 2006 (see paragraph 22 of that decision) and that therefore the Judge had materially erred in ignoring this factual starting point when assessing whether or not the Appellant had shown that he had lived most of his life lawfully in the United Kingdom as required in s. 117C(4)(a).

Findings and reasons

Ground 1

The first proposition

23. It is argued that the Judge materially erred in finding that there was no EEA decision in this appeal. I should note that there has been no attempt to seek permission from the Tribunal to withdraw the concession made by Ms Staunton that there was no EEA decision and therefore no EEA appeal, as recorded at para. 2(iii) of the decision.

24. At para. 7 of the grounds, Ms Staunton asserts that she did not concede this issue as such but had been unable to provide a legal authority to support her preliminary argument.

25. In my view the Appellant is plainly contesting the clear finding of the Judge that counsel conceded this issue without providing a witness statement from Ms Staunton and, ultimately then, not showing *good reason in all the circumstances* for the concession to be withdrawn, as per the test in NR (Jamaica) v Secretary of State for the Home Department [2009] EWCA Civ 856 at para. 12.

26. For completeness however, I find that the initial part of the Respondent's decision did not constitute an EEA decision for the purposes of the definition of that term in the 2016 EEA Regulations.

27. I find that the legal starting point for the assessment of this issue is the Grace Period Regulations.

28. As is clear, the Grace Period Regulations allow for the ongoing application of the 2016 EEA Regulations despite their revocation on 31 December 2020 with certain modifications and under certain circumstances.

29. In this case the Appellant is an EEA citizen who, as required at reg. 3 read with reg. 4 of the Grace Period Regulations, had made an application for Leave to Remain under Appendix EU during the grace period, (on 24 June 2021)).

> *"3.—(1) This regulation has effect if the EEA Regulations 2016 are revoked on IP completion day (with or without savings).*
>
> *(2) The provisions of the EEA Regulations 2016 specified in Regulations 5 to 10 continue to have effect (despite the revocation of those Regulations) with the modifications specified in those Regulations in relation to a relevant person during the grace period."*
>
> *…*
>
> *"(6) In this regulation—…"*
>
> *""relevant person" means a person who does not have (and who has not, during the grace period, had) leave to enter or remain in the United Kingdom by virtue of residence scheme immigration rules and who—*
>
> *(j)immediately before IP completion day—*
>
> > *(i) was lawfully resident in the United Kingdom by virtue of the EEA Regulations 2016, or*

(ii) had a right of permanent residence in the United Kingdom under those Regulations (see regulation 15), or…"

30. Reg. 7(1)(e) preserves the power in reg. 27 of the 2016 EEA Regulations.

31. In the appealed decision, the Respondent clearly highlighted that she considered the Grace Period Regulations to be her starting point. At para. 2 of the decision, the Respondent defined *lawful residence* in this context in the following ways:

- three months' initial right of residence under regulation 13
- extended rights of residence under regulation 14;
- residence after having acquired a permanent right of residence under regulation 15
- derivative rights of residence under regulation 16
- family members (prior to 31 December) of those EEA citizens lawfully resident in the UK prior to that date

32. The Respondent went on to conclude that the Appellant had not established that he was residing in the UK lawfully (as defined above) at the relevant time.

33. This initial finding did not then, in my view, constitute an EEA decision – it is clearly a decision taken with respect to the gateway provisions in regs. 3 & 4 of the Grace Period Regulations. Whilst this part of the decision necessarily draws upon the 2016 EEA Regulations for the relevant classes of lawful residence under that scheme, it is not in itself a decision made under those Regulations.

34. Equally, I reject the Appellant's argument that the Respondent's conclusion as to the lawfulness of the Appellant's prior residence should nonetheless be treated as 'an EEA decision' which attracted a right of appeal under reg. 36.

35. The definition in reg. 2 of the 2016 EEA Regulations reads:

> ""EEA decision" means a decision under these Regulations that concerns—
>
> (a) a person's entitlement to be admitted to the United Kingdom;
>
> (b) a person's entitlement to be issued with or have renewed, or not to have revoked, an EEA family permit, a registration certificate, residence card, derivative residence card, document certifying permanent residence or permanent residence card (but does not include a decision to reject an application for the above documentation as invalid);
>
> (c) a person's removal from the United Kingdom; or
>
> (d) the cancellation, under regulation 25, of a person's right to reside in the United Kingdom,…"

36. In my view, an *EEA decision* at (c) of the definition must be read with the beginning of the section, in other words there had to be decision under the

2016 EEA Regulations concerning his removal from the UK. I find that that such an EEA decision would be made from the starting point of reg. 23(6)(b) read with reg. 27 – there was no such decision in this case precisely because the Respondent concluded that the 2016 EEA Regulations did not apply.

The second proposition

37. I see no merit in the argument that the Respondent's decision was a hybrid decision in the sense that the Tribunal had the power to apply the 2016 EEA Regulations itself without a prior decision of the Respondent.

38. I have already explained why the Respondent's initial assessment of the Appellant's prior residence did not constitute an "EEA decision". I therefore find that the Court of Appeal's decision in Amirteymour v Secretary of State for the Home Department [2017] EWCA Civ 353 has no application to the issues in this case.

39. I deal with the Judge's findings about the Appellant's claim to have achieved a permanent right of residence later in this decision.

The third proposition

40. In regard to the third proposition, I can see no basis in the submission that the Judge's assessment of the Article 8 ECHR appeal had to also take into account the threshold tests for deportation in the 2016 EEA Regulations.

41. I have already explained why the Grace Period Regulations were the starting point for deciding which legal schemes applied to the Appellant's deportation.

42. I agree with the common ground between the representatives that if the Judge had concluded that the Appellant had evidenced (as reg. 3(13) of the Grace Period Regulations requires) that he was a *relevant person* as at 31 December 2020, then she would have been able to allow the appeal following the approach in Charles (human rights appeal: scope) Grenada [2018] UKUT 89 (IAC), ("Charles").

43. In Charles, the Appellant had established that he was exempt from deportation by operation of s. 7 of the 1971 Immigration Act, (para. 26). The Upper Tribunal went on to conclude that the fact that the Appellant was exempt from deportation meant that the hypothetical deportation proposed by the Secretary of State was automatically a disproportionate interference with the Article 8 rights of that appellant, (para. 59) and that this answered the available ground of appeal namely whether the refusal was unlawful under section 6 of the 1998 Human Rights Act.

44. The same approach was taken by the Upper Tribunal in MS (British citizenship; EEA appeals) Belgium [2019] UKUT 356 (IAC) at para. 91 – in that case the Appellant had claimed to be a British citizen by adoption. The Upper Tribunal concluded that the Tribunal had to engage with the

nationality issue in order to decide if MS's deportation was a proportionate interference with his Article 8(1) rights.

45. In this hypothetical scenario, if the Appellant could show that he met the requirements of the Grace Period Regulations such as to mean that the EEA Regulations should continue to apply to him (including regs. 26 & 27), and subject to establishing engagement with Article 8(1), then the appeal would be allowed on the basis that the Respondent could not yet lawfully deport the Appellant where another applicable legal scheme required an EEA decision and where no such decision had yet been made.

The fourth proposition

46. In my view, that agreed approach is also an answer to the fourth proposition. I conclude that the legal framework applied by the Respondent (the Grace Period Regulations) allowed her to conclude that the EEA Regulations did not apply and therefore proceed on the basis of a pure Article 8 ECHR assessment.

47. I accept Mr Saini's observation that this is perhaps not a perfect answer, but I do not accept the submission that the situation arising in this case is, in a legal sense, highly unusual – the issue in this case does not itself arise because of the introduction of the Grace Period Regulations but in fact flows from the well-known amendments made to the former s. 84(1)(e) of the NIAA 2002 by the Immigration Act 2014. Nor do I accept that this leads to the Appellant being without a voice against either the Respondent's decision under the Grace Period Regulations or the 2016 EEA Regulations.

48. In the first instance, I have found that it is perfectly permissible for an appellant to argue that the Respondent was wrong in the application of the Grace Period Regulations on appeal to the First-tier Tribunal in the context of Article 8 ECHR. It should also be noted that this Appellant did contend that he was lawfully resident in the UK under the 2016 EEA Regulations at the relevant time and the Judge made findings on this in the decision.

49. Secondly, if it is shown that the Grace Period Regulations apply, then the Respondent must apply the 2016 EEA Regulations if she continues to seek to expel/deport the Appellant from the UK on the basis of conduct pre-dating 31 December 2020. The subsequent EEA decision to deport will continue to generate a right of appeal under the 2016 EEA Regulations and therefore the Appellant has full voice against that decision.

50. I therefore reject the four propositions put forward and find that the Judge did not err in treating the appeal as an human rights appeal.

<u>Ground 2</u>

51. Mr Saini was right to concede in the hearing that the focus of the Appellant's appeal on previous lawful residence centred around whether he had previously acquired a *permanent right of residence* under the 2016 EEA

Regulations because, as at 31 December 2020, the Appellant was in prison and therefore not exercising Treaty rights at that time.

52. Focusing then on the challenge in ground 2, I find that the Judge did not materially err. As the Judge pointed out at para.11, there was a lack of clarity in the evidence before her as to when it was that the Appellant was released from prison in the period 2014 - 2019. I have taken into account the Appellant's speculative submissions about the likelihood of the Appellant only having served half of his sentence for the breach of his suspended sentence and therefore when release might have occurred, but these arguments do not establish that the Judge either committed a material mistake of fact or otherwise reached an irrational conclusion in finding that the evidence before her was insufficient to support the contention that the 5-year period had been established.

Ground 3

53. Allied to the Appellant's focus upon the 2014-2019 period is the further challenge to the Judge's conclusion that the Appellant was not exercising his Treaty rights throughout that period, at para. 12.

54. In that paragraph the Judge referred to HMRC records showing that the Appellant only earned £2600 in the 2018-2019 tax year and noted that the Appellant's explanation for this was that he was starting up a new business with his brother.

55. The Appellant has criticised this finding at para. 15 of the grounds (and I believe that these were adopted by Mr Saini in his condensed submissions). In effect it is said that the Judge should have taken judicial notice about the process of setting up a business (para. 15(a)) coupled with a re-argument at (b) that the Appellant may still have been working during the period but only earned a small amount due to the embryonic nature of the business venture.

56. I reject both arguments. There is no merit in the submission that the Judge should have taken judicial notice of the process involved in setting up a new business. This submission simply does not engage with the common law definition of judicial notice as detailed in Rees & Anor v Windsor-Clive & Ors [2020] EWCA Civ 816 at para. 81.

57. In respect of the second point, it was the Appellant's burden to evidence that he was working (or otherwise exercising his Treaty rights) during the period. The argument at (b) identifies no public law error but simply stands as a disagreement with the Judge's conclusion.

58. Furthermore, there is nothing in the complaint at para. 15(c). The fact that the Appellant had asserted in other evidence to the Probation Service that he was working throughout the 5-year period does not in any way undermine the lawfulness of the Judge's conclusion at para. 12 – again, the onus was on the Appellant to prove his case at the balance of probabilities, and the Judge permissibly found that he had not.

59. In terms of the argument at para. 15(d), I note that the Appellant has only stated part of the test in D.M.Levin v Staatssecretaris van Justitie, Case 53/81 – this authority also requires that the Appellant show that he was performing services of some economic value that were genuine, effective and more than marginal or ancillary. I find that the Judge reached conclusions on the 2018-2019 period which were open to her on the basis of the evidence and arguments put to her at the First-tier Tribunal hearing. I therefore find that the Judge was entitled to conclude that the Appellant had not established that he had achieved a permanent right of residence in the UK during that period.

60. This finding also puts pay to the further argument about 'ten years continuous residence'. Mr Saini properly accepted this is not, in itself, a distinct form of status under the 2016 EEA Regulations but reflects the highest level of protection (imperative grounds) against expulsion - in any event, the Court of Justice's decision in B (Citizenship of the European Union - Right to move and reside freely - Enhanced protection against expulsion - Judgment) [2018] EUECJ C-316/16 makes plain at para. 49, that in order for a person to rely upon the imperative grounds of public security threshold against expulsion, the EEA national criminal has to first establish that they attained a permanent right of residence. The Appellant did not do so in this case for the reasons given by the Judge.

Ground 4

61. Turning to the Appellant's challenge to the Judge's conclusion within the prism of Article 8 ECHR that the Appellant was not rehabilitated (para. 35(vi)), I find that there is no merit in the Appellant's submission.

62. It is evident that the Judge expressly recorded that the Appellant represented a low risk of reoffending (see para. 35(vi)) and there is therefore no force in the Appellant's reference to the details of the probation report which establish just that.

63. I also see nothing in the Appellant's submission that it was unlawful for the Judge not to show direct engagement with the fact that the Appellant had not offended whilst on bail for two years (para. 26 of the grounds) – in my view the Judge properly noted that the Appellant had only been out of prison for a relatively short period of time by the date of the hearing and she was entitled to conclude that this factor did not add materially in his favour in the assessment of Article 8(2) ECHR.

64. I also observe that the Judge found that some of the Appellant's oral evidence about his involvement in the last criminal offence rang hollow (at para. 22) and I therefore find that the Judge's conclusion was permissible looking at the decision in the round.

65. For the same reasons I reject the inter-related challenge to the Judge's conclusion that the Appellant was not socially and culturally integrated in the UK.

Ground 5

66. I further find that there is no merit in the Appellant's fifth ground. I accept that the Judge overlooked the finding by Upper Tribunal Judge Eshun in 2012 that the Appellant had entered the UK in January 2006 but this error does not constitute a material error of law.

67. The terms of s. 117C(4)(i) are clear – the UK residence has to be for most of the foreign criminal's life (meaning more than half) and it has to be lawful. The Judge's reference to lawful residence of 14 years at para. 18 was plainly taking the Appellant's case at its highest (i.e. his total length of residence minus the known periods of imprisonment). I have already explained why the Judge did not materially err in deciding that the Appellant had not established a permanent right of residence and therefore conclude that Judge also did not err in finding that the Appellant had only evidenced periods of lawful residence "*at times*" (para. 13). This finding was sufficient to dispose of the Appellant's reliance upon s. 117C(4)(a).

Notice of Decision

68. The Appellant's appeal is dismissed, and the decision of the First-tier Tribunal stands.

I P Jarvis

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

2 November 2023