Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: DA/00565/2017**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On the 25th October 2022	**On the 1st November 2022**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

ALEXANDER IBUWUNWA ADEOLA IHEKA
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: No attendance
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Germany born in 1998. He arrived in the UK in 2007 as a nine year old child. He was granted a registration certificate as an EEA citizen in 2008. A deportation order was signed against him under the EEA Regulations 2016 on 13th September 2017. His appeal against the decision to deport

him on the basis of his criminal record (six convictions for eight offences involving possession of knives, disorderly behaviour and robbery, the most serious of which led to a 2 year sentence of youth custody) was dismissed by First-tier Tribunal Judge Davey in a determination promulgated on the 11th October 2019.

2. Permission to appeal was granted and I found, for the reasons set out at my decision at Annex A, that the First-tier Tribunal had erred in law. I set aside the decision and all of the findings bar the finding that the appellant has permanent residence.

3. The matter now comes back before me to remake the appeal. In February 2020 I found an error of law but adjourned the remaking as the appellant was in custody having been charged with further offences of possession of cannabis and possession of an offensive weapon. I decided it was appropriate to delay remaking so that the trial to take place as his immigration solicitors estimated that it would only take six months for this matter to be processed in the criminal courts. The Covid-19 Pandemic then intervened, and the matter was relisted for the 19th October 2021 but his solicitors sought an adjournment on the basis that the criminal trial still had not taken place but was listed to take place by mid-March 2022.

4. A case management review took place on 5th April 2022 at which it was explained that the criminal trial still had not taken place but was listed for a 3 day hearing on 11th July 2022. The respondent said that their information was that the appellant had failed to attend his trial when it was listed in June 2021 and September 2021. I gave directions for the appellant's immigration solicitors to obtain information from his criminal solicitors about why two charges of possession (cannabis and a knife) were listed for a three day trial and whether the date in July 2022 was susceptible to change for reasons unrelated to the appellant failing to attend, and to confirm whether or not the appellant had failed to attend dates in June and September 2021 for his criminal trial. On 22nd June 2022 notice of the resumed hearing was sent to the appellant and his immigration solicitors, notifying that his re-making appeal would take place on 13th September 2022. I received no information as a result of my April 2022 directions, and on 31st August 2022 Westkin Associates, who had represented the appellant before the Upper Tribunal up to this point, went off the record saying that they were without instructions.

5. On 13th September 2022, the day of the remaking hearing, the appellant sent an email informing the Upper Tribunal that he had tested positive for Covid-19 and asking that his hearing be adjourned. He informed the Upper Tribunal that his criminal trial in July 2022 had not taken place due to the barristers' strike. The appellant's father also attended the Upper Tribunal hearing, to inform us of the same. He said he had spoken to his son on the

telephone, but had not seen his son and that they did not live together, and he believed his son still lived at his address in Chatham, Kent. Mr Melvin, who represented the respondent on this occasion, provided information from the Police National Computer system which stated that a bench warrant had been issued on 11th July 2022 at Wood Green Crown Court. It stated "No bail: arrest and detain for court". The offence to which this related was possession of an offence weapon (points and blades) on 20th January 2020 at the Royal Free Hospital. I adjourned the hearing with further directions to the appellant to request a letter from his criminal solicitors within 14 days of the date of the directions addressing whether the appellant failed to attend his criminal trial in June and September 2021; why the trial was adjourned in March 2022; why the trial did not take place in July 2022; when the trial is now listed for; and why the trial is listed for three days. The appellant was to file this letter within 2 days of receiving it. No response was received as a result of these directions. The appellant was notified that his resumed hearing would take place on 25th October 2022 by post and email on 5th October 2022.

6. The appellant did not attend the hearing on 25th October 2022. Instead at 8.41 on 25th October 2022 he sent an email to the Upper Tribunal stating he "would love it to have attended however I contacted my criminal solicitor who made me aware that there is currently a warrant for my arrest". His email does not explicitly ask for an adjournment but says that his immigration matter cannot be heard until his criminal matter takes place. He says that this warrant relates to charges from a matter three years ago and because he came home late on one occasion breaching his electric curfew, and so he had had to hand himself in. Once again the appellant's father, Mr K Iheka, attended the Upper Tribunal hearing to further explain his son's actions. He said that his son's girl-friend, whose name he did not know, had told him that the appellant had handed himself into the police this morning and was in custody/ being taken to the Crown Court. Mr K Iheka said he had been told about this Upper Tribunal hearing through his son's girl-friend. He accepted however that he had known about the arrest warrant for his son because it had been discussed at the hearing on 13th September 2022 which he had attended, and he also informed the Upper Tribunal that he had last seen his son in September 2022. He could not explain why his son had only gone to hand himself in today.

7. Ms Everett for the respondent requested that the hearing proceed today and not be further adjourned. I took the position of the appellant as requesting an adjournment so that the hearing would be listed after this criminal matter was resolved. I decided that it was fair and just to proceed with the hearing in the appellant's absence immediately and thus prior to the hearing of his latest criminal proceedings for the following reasons. The only reason to

have initially awaited resolution of the current charges was that it was believed that they would be quickly resolved as they were relatively minor, and this would lead to greater finality: in short if the appellant had won his immigration appeal but then been convicted again further deportation proceedings might have been commenced against him which would have been onerous in terms of public expense and in additional stress/expense for the appellant and his family. It has transpired however that the criminal matter is a far more complex one (although exactly why no one has been able to explain) than anyone believed when the initial decision to adjourn as made in February 2020. It has proven impossible to obtain any information via the appellant with respect to this criminal matter and the Upper Tribunal is therefore unable to make a decision based on the likely timing of the criminal trial before the appellant. There is nothing ultimately unjust about making a decision on the facts as they currently stand.

8. I also find that it is fair to proceed in the appellant's absence because I do not accept the reasons he gives for not attending today's hearing are true or the full story. He was notified of the hearing by post and email on 5th October 2022 and so had twenty days' notice of the hearing. I note that the back-drop to my decision is a series of unexplained non-attendances in his criminal matter, when he clearly (from his email) still has criminal solicitors acting for him who could have provided an explanation. I find the appellant has been aware that there has been an arrest warrant for him in relation to the current criminal since 13th September 2022, when his father attended the Upper Tribunal on his behalf and understood this was case and I believe would have passed this information to him given his father's interest in supporting the appellant with this case, and in any case he would have become aware of the warrant when he received my directions of 13th September 2022 sent to him at his address on 15th September 2022. I do not therefore believe the appellant only just has become aware of the arrest warrant as implied by his email. I do not know if he handed himself into the police on 25th October 2022 or whether this is untrue but I am certain that if he did so it was simply because he believed he could avoid his remaking hearing taking place if he did this. If he had handed himself in in September 2022, when I find at the latest he became aware of the arrest warrant, he could of course have been produced for the hearing before the Upper Tribunal had he been remanded in custody. As I find that the appellant has either lied to the Upper Tribunal about being in police custody or take deliberate action to put himself in a position so he could not attend this hearing I find it is fair and in the interests of justice that this matter now be heard. I can have no faith that he would attend any adjourned hearing in these circumstances.

Evidence & Submissions – Remaking

9. The appellant's evidence in his handwritten statements and two typed statements signed on 1st July 2019 is, in short summary, as follows. He has been brought up since the age of nine years in the UK and speaks little or no German. His family left Germany after he and his siblings were subject to racial abuse there. He argues that he has no family ties in Germany as his father, mother and three siblings all live in the UK. Whilst he was growing up the relationship between his parents broke down and he was placed in care. He says that the incidents between him and his mother when the police were called were in essence him defending himself against her being violent to him, but in any case she means everything to him. He currently lives separately from his family in Kent. His father works for a healthcare provider and his mother was training as a nurse, but it is unclear from the evidence if she still does this. He went to primary and secondary school, and college in the UK. He has worked as a musician and has produced music via Dice Recordings. He argues that his rap music is not to be taken literally: it is entertainment. He says that he is not in a gang, and it is now a while since he lived in the Edmonton/Enfield area where he accepts that he had friends who were in gangs. With respect to the CRIS reports he says that they make him out to be something he is not and are not proper evidence, as the matters were not proceeded with or he was acquitted, and he does not accept that he has ever done anything criminal except possession of a knife on two occasions.

10. In HMP Feltham he started a music organisation called "drop knives, pick up the mic", the aim of which is to get people out of committing crime and into making music. He argues that no one has actually been a victim of his criminal behaviour, as he was convicted of being in possession of a bladed article in a public place, which he now accepts was stupid of him, rather than of an offence involving use of a knife or actual violence. He says he is not a risk to the public, particularly as he understands the seriousness of his convictions. He was only 17 years old when he committed the criminal behaviour and has taken courses whilst in Youth Custody to enable his rehabilitation, and has now grown up a lot. He says that he is now supportive of the police. The appellant says that when he removed to Germany pending this appeal he struggled with obtaining benefits and housing, and was destitute in Berlin.

11. There are statements on file from the appellant's father (Mr K Iheka), his mother (AI), his sister (GI) and a friend Ms P in which they argue that the appellant is an important part of their family; that his criminal behaviour resulted from his having been taken into care and issues from the police due to his online music videos which led to multiple arrests; and that he should not be deported as they believed that the appellant would not commit crime in the future, and instead would support himself through his music. They

refer to the appellant sleeping rough in Germany on the streets of Berlin and to their sending money to him for him to survive.

12. Only Mr K Iheka, the father of the appellant, attended before the Upper Tribunal, he adopted his statement of June 2019 and confirmed that it was true and he wished to rely upon it as his evidence. Mr K Iheka explains that he is a mental health care assistant in his statement. In answer to questions from Ms Everett and the Judge he added as follows. He was clear that he does not live with the appellant. He said he had last seen him in September 2022 but recently had only spoken to his girl-friend, whose name he does not have. He was asked about what happened when the appellant was deported to Germany pending his appeal. He said he was dropped in Berlin not Frankfurt where they used to live. He indicted the appellant had stayed in the train station. He said he had found it difficult to get work in Germany because of language difficulties when he had lived there, and this was the same for the appellant.

13. The other documentary evidence consists of a report on the appellant's therapeutic/restorative activities when in Youth Custody between June and October 2017: he took part in one art therapy session, five mentoring sessions and six restorative justice sessions. The conclusion is that the appellant is educated and intelligent (which tallies with him having been at a grammar school for some of his schooling until he was expelled) who was keen to change his ways and direct his skills in a positive way, although with respect to the index offence he denied that he had anything to do with it. There is also a poster for "drop the knife pick up the mic" but no further information about this.

14. The decision to deport the appellant was made by the respondent on 13th September 2017. In summary the appellant's criminal history is noted as set out at paragraph one of this decision. It is argued that there is a real risk he will offend again, as he is assessed as being at medium risk of reoffending and a high risk of causing serious harm by the Youth Offending Service pre-sentence report of 2013; and a high risk of serious harm to others in the Youth Offender Institution report of 13th November 2017. This is particularly because there is also evidence of gang association before the Upper Tribunal in the form of CRIS material and allegations of domestic incidents between the appellant and his mother and sister which led to the police attending the home. He is said to pose a genuine, present and sufficiently serious threat to one of the fundamental interests of society. It is also noted that the appellant can speak German, and it is assessed he had sufficient language to work, gain accommodation and integrate in Germany. The appellant had lived in Germany until he was ten years old and so would have developed a significant knowledge of life in Germany. It is noted that he was working as a self-employed

musician at the point in time when he was imprisoned, and that there was no evidence that he was not in good health. He was also living separately from his UK based family when he was arrested and sent to prison.

15. In a supplementary letter of 13th November 2017 further details are provided of the risk the appellant poses. He is said to be MAPPA level 1 because he poses a risk of violent reoffending, and it is pointed out that knife crime means that incidents escalate to causing serious harm and death, and there is a wider impact of causing fear and insecurity in the community, and that the appellant had a previous conviction for robbery and had previously been convicted twice of having a knife in a public place. Information from the Metropolitan Police suggested that the appellant was involved with gangs, and specifically that he was rated 7 on the Enfield Gangs Matrix, as a prominent member of Dem Africans (DA) Enfield Gang, and had been arrested on numerous occasions. The appellant is said to have problems with his thinking, behaviour, problem solving and temper, as well as impulsivity and aggressive and controlling behaviours by his offender manager. The appellant had not provided evidence that he had undertaken the enhanced thinking skills course or a victim awareness course as recommended by his offender manager. It is said that as the appellant had not provided evidence of accommodation or of the fact that he is supporting himself through work as a musician, and that his personal circumstances may lead him to reassociate with negative peers and resort to a criminal life style. It is argued as a result that the appellant is a serious risk to public policy.

16. It is also argued that it would be proportionate to deport the appellant as the appellant is not socially and culturally integrated in the UK due to his criminal behaviour and gang associations, his lack of evidenced work or other positive community ties. There is no evidence of any rehabilitation in terms of courses, and that his family in the UK have been unable to prevent the appellant reoffending in the past. It is considered he would be able to reintegrated into the community in Germany due to his previous life there which would give him knowledge, some linguistic skills and cultural links to that society.

17. It is also argued that the deportation of the appellant would be lawful and in accordance with Article 8 ECHR as he has been convicted and sentenced to a period of imprisonment of more than a year. The s.117C family life exception to deportation does not apply as he has no known children or partner. The private life exception does not apply as the appellant is not socially or culturally integrated in the UK and he would not have very significant obstacles to integration if he returned to Germany. The

fact that the appellant's parents and siblings live in the UK does not amount to a very compelling circumstance.

18. In submissions from Ms Everett it is argued that there are serious grounds which justify the appellant's deportation on the basis of his posing a genuine, present and sufficiently serious threat to a fundamental interests of society based on his personal conduct. Ms Everett argues that the past criminal history (the convictions, the Youth Offender Institution Report of 2017 and Pre-Sentence Report of 2013 and the extensive CRIS surveillance material about arrests and encounters by the police with the appellant indicating gang connections) is supplemented by the appellant's unaccountable behaviour in relation to the current criminal case and his immigration appeal where the evidence is that he has failed to attend, at least in July 2022, and is therefore the subject of a bench warrant in the criminal matter, and in the immigration matter has made up implausible and unclear reasons for non-attending today. She submits that this is the not the behaviour of a person who has changed his life and turned away from a life of crime or is rehabilitated.

19. With respect to the proportionality of his removal Ms Everett submitted that the evidence regarding his time in Germany from the appellant's father (which from the Upper Tribunal file appears to have been from approximately June 2018 to June 2019) was that he was unhappy, and spent some time in a train station and may have been reliant on charity. However ultimately there is no clear evidence of what happened from the appellant himself, and there is no reason why he could not make a go of his life in that country. There is no huge difference between the UK and Germany in terms of culture and standard of living, and whilst he might have forgotten his basic German he had as a small child there is no reason to think he could not learn the language now. Further there is no evidence before us now that the appellant is leading a rehabilitated integrated life in the UK.

20. I have taken into account the skeleton argument prepared on behalf of the appellant by Mr A Maqsood of Counsel who represented him before the First-tier Tribunal. In essence it is argued that the appellant's criminal convictions were all as a minor who had been placed in care following the break-down of his parents' relationship. It is argued that he has now turned a corner and that he now opposes knife crime, is supportive of the police and is of no risk to the public so there are no serious grounds showing a genuine present and sufficiently serious threat to the public based on his current personal conduct. The CRIS evidence is just 2500 pages of unsubstantiated allegations which did not proceed to charges and trials and so should not be given weight. Further the appellant's deportation would not be proportionate as he has lived in the UK since he was nine years old, and therefore

the majority of his life. It is argued that he is socially and culturally integrated here, and that the family had been isolated and not integrated in Germany. The appellant is now making a contribution to society through his music which has a huge fan base.

Conclusions – Remaking

21. The appellant has permanent residence, and thus he only falls to be deported under the EEA Regulations if the respondent shows that he can meet the serious grounds of public policy and/or public security test at Regulation 27(3) of the EEA Regulations. In Straszewski at paragraphs 22 to 24 of the judgment the Court of Appeal finds that states have some freedom to interpret this test but the Directive must ultimately be interpreted strictly. It must be an evaluative exercise on the facts of the individual case, in the context of there being no case of the CJEU which deals directly with the kind of conduct which is sufficiently serious to justify the deportation of an EEA national who enjoys a permanent right of residence but who has not lived in the member state concerned for at least ten years. In relation to Mr Straszewski the Court of Appeal found that despite the fact that he posed a medium risk of reoffending and a medium risk of serious harm to the public in the context of his having convictions for unlawful wounding and robbery (for which he received two sentences: one of 15 months of imprisonment and one of 42 months) the decision of the First-tier Tribunal that the evidence in his case did not suffice to meet the serious grounds test to be deported was lawful.

22. My first issue for this decision is therefore whether the respondent has shown that there are serious grounds of public policy which justify the appellant's deportation based on his personal conduct as he poses a genuine, present and sufficiently serious threat to a fundamental interest of society. His criminal convictions are not a sufficient matter without more to show this test is met but are nevertheless relevant.

23. I turn first to the sentencing remarks of His Honour Judge D Richardson in Blackfriars Crown Court on March 2017 it is noted that this was the third time the appellant was before a court for having a bladed article (knife) in a public place, he noted that knives cause serious injury and death in incidents which would otherwise be minor, and that the appellant had not handed it over when the police had attended but run away and tried to dispose of it.

24. The appellant's previous criminal convictions are as follows. A conviction for possession of a knife in a public place in July 2013 for which he received a five month referral order; December 2013 a conviction for using disorderly behaviour/threatening and abusive words likely to cause harassment, alarm or distress for

which he had youth rehabilitation order; May 2014 a conditional discharge for resisting or obstructing a police constable; May 2015 conviction for robbery, possession of a knife in a public place and breach of the conditional discharge for which he got a 12 month supervision order; and October 2015 a fine of £50 for possession of cannabis.

25. In addition to the convictions the appellant is subject to Multi-Agency Public Protection Arrangement (MAPPA level 1 – the lowest level), which is a process whereby the police, probation and prison services work together with other agencies to manage risk posed by violent and sexual offenders living in the community to protect the public. This referral was a result of the extensive (2500 pages) of CRIS (crime reporting information system) intelligence for the years 2011 and 2016 which shows that the appellant has been investigated for a substantial number of offences that did not result in convictions, and which the respondent has placed in evidence in this case. At page 11 of the bundle it states that the appellant was referred to MAPPA in 2014 due to concerns of gang membership by the appellant. The CRIS evidence also makes reference to YouTube videos in which the appellant brandishes a knife in a public place. In the bundle there is statement from a police officer, Mr Stylianou, who worked in the gangs unit in Edmonton, dated November 2016, which identifies the appellant as a prominent member of Dem Africans a gang which is ranked as 6 out of 305 recognised gangs in London, and refers to his associates and the fact that he uses insulting music YouTube Videos featuring knives in support of his position.

26. The respondent's evidence also includes two probation reports: the first from December 2013 from Enfield Youth Offending Service when the appellant was 15 years old and the second the Youth Offender Institution Report of November 2017. The first report assesses the appellant as medium risk of re-offending given his pro-offending peers and poor thinking and judgement skills. He was found to lack remorse and to be at high risk of causing serious harm. The second report details his gang membership, details of violent crimes which did not result in charges or proceedings as well as those that did from 2013 and 2014. He is assessed as being a high risk of re-offending, with comments that he has a desire to cause serious harm in the future and lacks remorse and so he poses a high risk of causing serious harm to others.

27. The respondent's evidence also includes the licence on which he was apparently to be released from Youth Custody in October 2017. It is notable that he refused to sign agreeing the conditions of this licence which included not to contact a number of people, not to be out between 10pm and 6 am and 2pm and 4pm, and not to own more than one mobile phone.

28. I note that the appellant denies any gang involvement and tries to minimise his criminal history, whilst accepting that he did some wrong but saying he has now turned his life around and is pro-social in his attitudes, for instance supporting the police. I am satisfied however on the basis of the totality of the evidence that the appellant was heavily involved with gangs and knife crime from 2013 to 2016 based on his convictions, the statement of Mr Stylianou, the probation reports and his MAPPA 1 designation. This evidence is very detailed and extensive, and the response of the appellant is insufficient. For instance, whilst he addresses the evidence in his YouTube Videos, by saying essentially that they are art not a reflection of his reality, he does not place any of them in evidence or explain how he justifies this position with reference to them. I appreciate however this is all evidence which goes to his the threat he posed to society some six years ago. I therefore turn to the evidence relating to what the appellant has done since that time in the period of time between the beginning of 2017 and the present time, a period of almost six years.

29. I first try to establish where the appellant has been in this time. The appellant was detained/in Youth Custody from the beginning of 2017 to January 2018 when he was granted temporary release to a hostel in Ealing. I am uncertain when he was deported to Germany pending his appeal but by the time of the CMR hearing on 10th July 2018 it is recorded that he was living there. He clearly still lived there in March 2019 from a letter from his then representatives, MK Law. He returned to the UK for his hearing on 29th June 2019 and was detained. On 6th September 2019 the appellant was released on bail by a First-tier Tribunal Judge. He has remained in the UK since this time, but was remanded in custody at some point in early 2020, prior to the 3rd February 2020, due to the current criminal charges. I believe that the appellant was released to his current address in Chatham at some point around September 2020. As a result I conclude that the appellant has spent the following periods at liberty in the UK since that time: approximately 7 months in 2018, approximately 3 months in 2019, approximately two years and one month since September 2020 to the present. This is a totally of two years and 11 months. He appears to have spent approximately a year living in Germany between June 2018 to June 2019.

30. The only evidence, from the appellant and his family, I have about this time is that in Germany he was homeless and reliant on remittances from the UK to live, and found it very hard to integrate there. There is no detail in this evidence about what more precisely the appellant did in Germany however considering that the appellant spent around a year in that country. There is even less detail about his time spent in the UK. I have no evidence from the appellant or his family as to what he has been doing on a day to day basis in this time.

31. The only matter I have any information on relating to what he has done whilst in the UK during the period after his release in January 2018 relates to his current criminal charges, and comes from his former immigration solicitors and the Police National Computer print-out provided by the respondent. From the PNC print out it is clear that he was arrested on charges of possession of a knife in the Royal Free Hospital on 20th January 2020, and has been wanted for bail offences since 16th February 2022, with a bench warrant issued at Wood Green Crown Court on 11th July 2022. The appellant claims to have only recently become aware of the July warrant for his arrest for non-attendance at the Crown Court , but I do not accept this evidence as he appears to have been represented in his criminal matter throughout, his immigration solicitors provided a mobile phone number for him in August 2022, and he clearly has an operational email address which he uses to communicate with the Upper Tribunal, and he has clearly been in contact with his father in September 2022, and his father was aware of the warrant at least from the date of the Upper Tribunal hearing in September. I find that the evidence before me shows that the appellant has not been cooperating with the criminal justice system in the listing of his trial on charges possession of an offensive weapon (a knife) at least since February 2022 when he became wanted on bail offences, and that he has been untruthful in his dealings with the Upper Tribunal to attempt to obtain an adjournment of this hearing.

32. In these circumstances I accept Ms Everett's submission that the appellant has not shown that he has turned his life around from a life of gang and knife crime associations, because he is not cooperating with the criminal justice system in trying to vindicate his innocence of the latest knife crime charge, and further is trying to avoid attending the Upper Tribunal and having to explain himself at the current time. He has also failed to provide any up-dating statement set out any details of a current pro-social life. I find that although he undertook a small number of potentially rehabilitative courses whilst in Youth Custody, as detailed in the Belong charity report dated 4th December 2017, I find that these have had no actual effect on his life, and that he is not rehabilitated. The appellant is an intelligent man, who was accepted in Grammar school as a school boy and who says he has been successful making music and videos. He is therefore intellectually capable of providing evidence to the Upper Tribunal even if he is not represented. I find that if he truly had turned away from this old life of violent gang involvement and knife crime he would have co-operated with the criminal justice system and would have been willing to provide a full statement and attend the Upper Tribunal to give details of his new law-abiding life.

33. I must now turn to whether the appellant poses a genuine, present and sufficiently serious threat to a fundamental interest of society

based on his personal conduct. I find that membership of a dangerous gang who carry knives, and leads to the appellant having to be monitored by police and multi-agency groups to secure the safety of the community, and which has also lead to convictions for possession of knives does suffice for the respondent to show that the appellant poses a genuine, present and sufficient threat to a fundamental interest of society based on person conduct. I find that the appellant has done nothing to show that his life is no longer on this path, and that the evidence of the respondent suffices to show that this was a path he sustained for a substantial period of time, and indeed that the recent actions of the appellant indicate that he has nothing to say to the Upper Tribunal to persuade me that this is no longer his trajectory. I must however in addition consider whether there are serious grounds of public policy to justify the appellants' deportation: is his conduct sufficiently serious to justify the deportation of an EEA national who enjoys a permanent right of residence in light of the threat he poses. On the evidence before me I am satisfied that this appellant does not simply engage in periodic acts of criminal behaviour but has a life-style consisting only of continual pro-criminal activity and associated threat of serious harm to the community in which it takes place. As his Honour Judge D Richardson in Blackfriars Crown Court on March 2017 said the carrying of knives in this culture turns incidents which might otherwise be minor into ones which carry a high degree of risk of serious harm to others. The probation reports indicated that up to 2017 that the appellant lacked remorse and even had a desire to cause serious harm to others. I am satisfied taking into account all of the evidence in this case that there are serious grounds of public policy justifying the appellant's deportation.

34. I move on to consider whether the appellant's deportation is proportionate in all of the circumstances. I am satisfied that it is for the following reasons. I firstly find that the appellant is not integrated in the UK. He has some contact with his family (father, mother and sister) who live here but he does not live with them or share his life with them to any meaningful degree. His father, whilst loyal and supportive to him, could not give any details about his life in Germany or currently in the UK. He did not even know his girl-friend's name despite having spoken to her. The appellant has provided no other evidence or details of any other form of integration in the UK. So whilst I accept that he has lived here since he was nine years old, been to school and college in this country and has friends and associates here I do not find that he is integrated due to the long period, since at least 2013, when he has lived a life based solely around knife gangs and crime. I also find that there is no reason why he could not re-integrated if he were to return to live in Germany, his country of nationality. He lived in Germany from his birth until he was nine years old, and

again for approximately a year from June 2018 to June 2019. He is an intelligent man and I find that he will have acquired the basics to communicate in German during his year prior to his First-tier Tribunal hearing given he had approximately three years of primary education in German in Germany. He has provided no reasons why he could not support himself as a self-employed musician in that country as he has claimed to do in the UK or indeed by doing other unskilled work. He is a clever and healthy young man. He has claimed to have been reliant on money sent by relatives in the UK and to have experienced homeless in Germany but not given an account that I can accept explaining how long this lasted or why he was not able to access benefits, homeless housing and or work in that country. As Ms Everett has submitted Germany is a country with a similar standard of living to the UK, and culturally not vastly different.

35. I therefore find that the appellant's deportation is lawful in accordance with Regulation 27 of the Immigration (EEA) Regulations 2016.

36. For the same reasons the appellant's appeal fails when considered in the context of Article 8 ECHR. Whilst he has a private life in the UK, which includes his relationships with his parents and siblings, and his removal will interfere with his private life ties I find that this interference is in accordance with the law, and is proportionate. The appellant has been sentenced to a period of imprisonment of two years, and so it is in the public interest to deport him, particularly as I have found, for the reasons given above, that he poses a genuine, present and serious threat to public policy and thus fundamental interests of our society. As the respondent has argued he cannot meet the family life exception to deportation in the statutory framework at s.117C of the Nationality, Immigration and Asylum Act 2002 as he has provided no evidence of having a partner or children in the UK. He cannot meet the requirements of the private life exception to deportation because he is not socially and culturally integrated in the UK due to his pro-criminal associations and convictions and would not have very significant obstacles to integration if returned to Germany. There are no very compelling circumstances in the appellant's case: he has family in this country but has not evidenced any close contact with them.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

2. I set aside the decision of the First-tier Tribunal but preserve the finding that he has permanent residence.

3. I remake the appeal by dismissing it under retained EU law and on human rights grounds.

Signed: Fiona Lindsley Date: 26th October 2022
Upper Tribunal Judge Lindsley

Annex A: Error of Law Decision

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Germany born in 1998. He arrived in the UK in 2007 as a nine year old child. He was granted a registration certificate in 2008. His appeal against the decision to deport him on the basis of his criminal record (six convictions for eight offences involving possession of knives, disorderly behaviour and robbery, the most serious of which led to a 2 year sentence of youth custody) was dismissed by First-tier Tribunal Judge Davey in a determination promulgated on the 11th October 2019.

2. Permission to appeal was granted by Judge of the Upper Tribunal Blundell on 2nd November 2019 on the basis that it was arguable that the First-tier judge had erred in law in failing to consider whether there were serious grounds of public policy to remove the appellant from the UK given that it appears to have been common ground that the appellant had acquired a right of permanent residence in the UK. It is also arguable that the test applied was not expressed made clear and that the evaluative exercise required by the Court of Appeal in Straszewski & Kersys [2015] EWCA Civ 1245 had not been properly undertaken by the First-tier Tribunal.

3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions – Error of Law

4. The appellant argues in summary in his grounds, skeleton argument and oral submissions by Mr Marziano as follows. Under Regulation 27 of the Immigration (EEA) Regulations 2016, henceforth the EEA Regulations, the three tests to deportation, depending on period of residence and possession of permanent residence, are set out. It was clear from the facts of the case that the appellant had come to the UK to reside with his parents, his father being a worker, and had been granted a certificate of registration in March 2008. He was first imprisoned in 2017. It was therefore clear that he had acquired the right of permanent residence under Regulation 15 of the EEA Regulations. It is argued that the appellant could therefore only be deported in accordance with Regulation 27(b) of the EEA Regulations and that as a result the Secretary of State was required to show “serious grounds of public policy” or “public security”, and that the First-tier Tribunal failed to direct itself properly on this point with reference to the findings of the Court of Appeal in Straszewski.

5. It is argued that the First-tier Tribunal also errs by the consideration of the facts of the case. The simply identification of the offences, possession of knives, at paragraphs 7 and 8 of the decision does not make a case that the appellant's deportation is required on serious grounds of public policy and or security particularly as the appellant was very young and was sent to a Young Offenders Institution. The fact that he is a medium risk of reoffending as per the probation report at paragraph 12, similarly does not assist determining this issue, and neither does a pre-sentence report, set out at paragraph 20 of the decision, from 2013 assist. Similarly, his mother's views, set out at paragraph 16 of the decision, on his rehabilitation are also not relevant to this task. In summary, it is contended, that the finding that there is a threat of reoffending for crimes relating to weapons and violence at the level set out in the appellant's record is insufficient to meet the "serious grounds" test.

6. It is argued that these legal errors mean that the conclusion that his deportation is therefore justified as he is a present threat and sufficiently serious threat to a fundamental interest of society and that it is proportionate to deport the appellant is therefore unsound. It is argued that the errors are material as it is not possible to be certain of the outcome of the case if the proper test were applied. It was argued that the offending in Straszewski was more serious than that of this appellant so it was clear that the appellant could win his appeal if the Tribunal were properly directed.

7. The Respondent argued in her skeleton argument that there was no concession at the hearing that the appellant has a permanent right of residence, and this is clearly not the case from the supplementary refusal decision dated 13th November 2017. However, at the hearing Mr Clarke clarified that there was no cross-appeal and so he did not argue that the First-tier Tribunal erred in law by failing to reason the finding that the appellant was entitled to permanent residence.

8. Mr Clarke argued however that the First-tier Tribunal accepted that the appellant had a right of permanent residence at paragraph 23 of the decision. As a result it was clear that serious grounds of public policy or security would have to be shown by the respondent for the deportation appeal to succeed. In the same paragraph the First-tier Tribunal finds that there is a "genuine and sufficiently serious threat", that the appellant was not integrated and had not rehabilitated in the UK. It is therefore clear that he met the "serious grounds" test because he poses an on-going risk of violent knife related crime. It is argued that insight into offending and rehabilitation were relevant to the findings in Straszewski that the serious grounds test was not met and so these factors were properly considered when concluding that the

appellant, who had committed serious criminality, fell to be deported applying this test. It was not an irrational finding that a person who posed an on-going risk of knife crime to the public did meet this test. There was therefore no material error in the decision of the First-tier Tribunal.

Conclusions – Error of Law

9. The respondent did not ultimately contest the finding that the appellant had permanent residence, and thus that the appellant falls only to be deported under the EEA Regulations if the respondent shows that he can meet the serious grounds of public policy and/or public security test at Regulation 27(3) of the EEA Regulations.

10. The key question to determine is whether the First-tier Tribunal applied the test at Regulation 27(3) of the EEA Regulations, requiring not simply that the appellant's deportation was required on grounds of public policy as he was a genuine, present and sufficiently serious threat to a fundamental interest of society based on his personal conduct, but that there were "serious grounds" of public policy or public security justifying the appellant's deportation. I do not find that the First-tier Tribunal applied this correct test as it is only the lower level test which is reiterated at paragraphs 23 and 26, and there is no reference to the need for "serious grounds". Given the fact that this is to be determined by a evaluative exercise relating to the individual facts of the case I find that it was particularly important that the test was explicitly set out and explicitly applied so that the appellant was clearly given the benefit of this higher level of protection.

11. It could have been that the error was not material if it were inevitable from the facts of the case that the "serious grounds" test is met. In Straszewski at paragraphs 22 to 24 of the decision the Court of Appeal finds that states have some freedom to interpret this test but the Directive must ultimately be interpreted strictly. It must be an evaluative exercise on the facts of the individual case, in the context of there being no case of the CJEU which deals directly with the kind of conduct which is sufficiently serious to justify the deportation of an EEA national who enjoys a permanent right of residence but who has not lived in the member state concerned for at least ten years. However, in relation to Mr Straszewski the Court of Appeal found that despite the fact that he posed a medium risk of reoffending and a medium risk of serious harm to the public in the context of his having convictions for unlawful wounding and robbery (for which he received two sentences: one of 15 months of imprisonment and one of 42 months) the decision of the First-tier Tribunal that the evidence in his case did not suffice to meet the serious grounds test to be deported was lawful. Considering the nature of the test to be

applied and the facts of this case I find that the outcome of any appeal applying the correct "serious grounds" test cannot be said to be inevitably that the test would be met. The error of the First-tier Tribunal in failing to apply the correct test is therefore material.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

2. I set aside the decision of the First-tier Tribunal but preserve the finding that he has permanent residence.

3. I adjourn the remaking hearing.

Directions

1. The remaking hearing will be relisted for the first available date after the 1st September 2020 allowing for the appellant to be tried in relation to the currently outstanding charges against him.

2. The appellant's solicitors are to file and serve on the respondent a paginated bundle containing any sentencing remarks relating to the current charges against the appellant (he is currently remanded in custody and charged with possession of cannabis and possession of an offensive weapon) and any other updating evidence relating to his rehabilitation 10 days prior to the remaking hearing.

Signed: Fiona Lindsley Date: 11th February 2020

Upper Tribunal Judge Lindsley