



First-tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/00958/2022

THE IMMIGRATION ACTS

Heard at Taylor House
On 24 January 2025 and 14 March 2025

Decision & Reasons Promulgated

.....24.03.2025.....

Before

JUDGE OF THE FIRST-TIER TRIBUNAL J K SWANEY

Between

DC
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Renfrew, counsel, instructed by Maxlaw Solicitors Ltd
For the Respondent: Mr G Mavrantonis, counsel

DECISION AND REASONS

Direction pursuant to rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

Unless and until this appeal is finally determined or the court/tribunal directs otherwise the appellant, any member of his family and his former partner is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant, any member of his family and his former partner. Failure to comply with this order could amount to a contempt of court.

1. I have made an anonymity order in this matter because the appeal involves matters relating to the appellant's child, including proceedings in the High Court and under the 1980 Hague Convention on the Civil Aspects of International Child Abduction (the Hague Convention). Section 97(2) of the Children Act 1989 requires anonymity for a child subject to family law proceedings and includes a prohibition on the disclosure of any information which might identify the child and one in these proceedings is therefore necessary to ensure no inadvertent breach of the order in the Family Court proceedings.
2. The appellant is a citizen of Cyprus. He appeals the decision made on 30 May 2022 to refuse his human rights claim and the decision also dated 30 May 2022 to refuse his application for leave to remain under the EU Settlement Scheme (EUSS).
3. The appellant first arrived in the United Kingdom in September 2002 with entry clearance as a student. On 28 July 2003 he applied for leave to remain as a student. This was granted valid until 31 March 2004. He made another application for further leave to remain on 7 April 2004; however, that application was rejected on 21 April 2004.
4. The appellant did not come to the attention of the respondent again until 28 April 2010 when he was convicted of two counts of carrying on a licensable activity on/from premises other than in accordance with an authorisation. He was sentenced to pay a fine, costs, and a victim surcharge.
5. On 26 March 2016 the appellant received a police caution for common assault.
6. On 27 September 2019 the appellant was convicted of handling stolen goods (undertaking to, or assisting in retention, removal, disposal or realisation). He was sentenced to six years' imprisonment, and a confiscation order for £51,950 was made.
7. The appellant made an application for leave to remain under the EUSS on 7 October 2019.
8. On 22 November 2019 the appellant was convicted of conspiracy to defraud and was sentenced to six years' imprisonment to be served concurrently with his earlier sentence.
9. As a consequence of his convictions, on 29 January 2020 the respondent notified the appellant that he was liable to deportation pursuant to the Immigration (European Economic Area) Regulations 2016 (the 2016 Regulations) and provided him with an opportunity to make representations as to why he should not be deported.
10. It appears that the appellant made a No Time Limit application on 13 February 2020. This is an administrative application whereby someone who has indefinite leave to remain can apply to have that status confirmed. The application was rejected on 26 February 2020 on the basis that the appellant was ineligible.
11. On 7 June 2021 the appellant was asked to provide any further information which was capable of demonstrating that he was lawfully resident in the United Kingdom

immediately prior to 23:00 on 31 December 2020, i.e. as at the end of the transition/implementation period.

12. In response to the respondent's two letters, the appellant made submissions on 5 March 2020, 19 June 2020, and 17 June 2020.
13. The respondent considered those submissions and the supporting evidence provided, and in a letter dated 30 May 2022 notified the appellant that he had determined that the appellant was not lawfully resident in the United Kingdom immediately prior to 23:00 on 31 December 2020 and that he was not otherwise a relevant person as defined in regulation 3 of the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020. The respondent notified the appellant that he had therefore decided to pursue the appellant's deportation under the provisions of the UK Borders Act 2007.
14. In a letter of the same date, the respondent gave reasons for refusing the appellant's submissions which he had treated as a human rights claim. The respondent gave reasons for finding that the 2016 Regulations did not apply and considered whether the appellant's circumstances were very compelling such that the public interest in deportation was not justified. In other words, the respondent considered the appellant's rights pursuant to article 8 of the European Convention on Human Rights (ECHR), but not under the 2016 Regulations. A deportation order was signed against the appellant on 30 May 2022.
15. In a third letter also dated 30 May 2022 the respondent refused the appellant's EUSS application on the basis that his removal was justified on grounds of public policy and because he was subject to a deportation order.
16. The appellant lodged an appeal against both the refusal of his human rights claim and the refusal of his EUSS application on 13 June 2022.
17. The appellant has a daughter with his former partner. In 2018 he made an application to the Family Court for a prohibited steps order and a contact order. On 30 October 2018 the Family Court ordered that the appellant's daughter would live with her mother but made a child arrangements order which provided for contact, including staying contact, with the appellant. Contact ceased when the appellant was imprisoned.
18. The appellant then made a further application for a child arrangements order while he was in prison. The appellant sought a prohibited steps order to prevent his former partner from taking his daughter out of the United Kingdom. His former partner did in fact take the child out of the United Kingdom in May 2022, in breach of a prohibited steps order. As a consequence, the proceedings were transferred to the High Court, who on 2 August 2022, ordered the return of the appellant's daughter to the United Kingdom.
19. The appellant's former partner made representations to the High Court that she had been unable to comply with that order because the child was refused entry to the

United Kingdom at border control in France. This was because the appellant's former partner had not applied for leave to remain for their daughter under the EUSS. The High Court referred the matter to the International Child Abduction and Contact Unit in England and Wales. The proceedings in the High Court were stayed on 15 December 2022, pending the appellant's application under the 1980 Hague Convention on the Civil Aspects of International Child Abduction (the Hague Convention).

20. Initially, an application was made to the Riga city court, as it was believed that the appellant's former partner and daughter were residing in Latvia. The Riga city court received information on 1 March 2024 that they were in fact residing in Italy, which resulted in the transfer of the proceedings to Italy.
21. The Central Authority in Italy acknowledged receipt of the application for return to the United Kingdom filed by the appellant on 16 December 2024. It wrote to the Central Authority in England and Wales requesting further information.

The respondent's decisions

22. The respondent gave reasons for finding that the appellant is not entitled to the protection of the 2016 Regulations. This is not an appealable decision but is relevant to the issues to be determined in this appeal.
23. The respondent's position as set out in a letter dated 30 May 2022 is that the appellant is not entitled to the protection of the 2016 Regulations. This is because she does not accept that there is sufficient evidence to show that he was lawfully present in the United Kingdom immediately prior to 23:00 on 31 December 2022. In other words, he was not exercising Treaty rights and had not already acquired a right of permanent residence or that he was otherwise a 'relevant person' as defined in regulation 3 of the Citizens' Rights (Application Deadline and Temporary Protection)(EU Exit) Regulations 2020 (the Grace Period Regulations).
24. As set out above, the two decisions under appeal are the refusal of the appellant's human rights claim, and the refusal of his application made under the EUSS. The respondent gave reasons for those decisions in two letters dated 30 May 2022.
25. The refusal of the appellant's application under the EUSS firstly considers the appellant's eligibility under the provisions of Appendix EU. The respondent finds that the appellant is not eligible for leave to remain. The respondent then goes on to consider the principles contained in regulation 27 of the 2016 Regulations notwithstanding her decision that the 2016 Regulations do not apply to him. The respondent concludes that the appellant's removal is justified on serious grounds of public policy.
26. The respondent also refused the appellant's human rights claim. She considered that there is significant public interest in deporting the appellant in light of his convictions. She did not accept that the appellant has a genuine and subsisting parental relationship with his daughter or that the appellant's presence in the United Kingdom was necessary to protect and promote her best interests. The respondent considered

that it was in the child's best interests to remain with her mother, who was her primary carer. The respondent did not accept that the appellant is socially and culturally integrated in the United Kingdom because of his convictions, a lack of evidence that he has made a positive contribution to society, and because he had provided no evidence of significant ties to the community. The respondent did not accept that there would be very significant obstacles to the appellant's integration in Cyprus. She found that the appellant did not enjoy family life with his mother in the United Kingdom or that his removal would cause unjustifiably harsh consequences for the appellant or his mother.

The appellant's case

27. The appellant's case is that he was residing in the United Kingdom in accordance with the Immigration (European Economic Area) Regulations 2016 (the 2016 Regulations) prior to 31 December 2020, and that he had acquired a right of permanent residence prior to that date. He therefore contends that he is entitled to the protection against deportation afforded by the 2016 Regulations as saved by the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 (the Grace Period Regulations).
28. Further and in the alternative, the appellant claims that his deportation is disproportionate and therefore amounts to an unlawful interference with his rights pursuant to article 8 of the European Convention on Human Rights (ECHR).
29. The appellant also argues that his deportation will breach his right to a fair trial pursuant to article 6 of the ECHR because he will effectively be prevented from pursuing proceedings relating to the return of his daughter under the Hague Convention and his application for a child arrangements order.

The appeal hearing

30. The appellant attended the hearing and gave evidence in English. There were three additional witnesses. Mr Mavrantonis confirmed that he did not wish to cross examine any of them, so they each adopted the contents of letters they had written in support of the appeal contained in the appellant's bundle. I considered the oral evidence and submissions together with the following documents in reaching my decision:
 - (i) Appellant's notice and grounds of appeal.
 - (ii) Appellant's bundle (including skeleton argument).
 - (iii) Appellant's written submissions.
 - (iv) Respondent's bundle.
 - (v) Respondent's review.
 - (vi) Respondent's written submissions.
 - (vii) Authorities cited by both parties.
 - (viii) Bundle of documents disclosed by the Family Court.
31. Mr Mavrantonis sought an adjournment of the hearing on the basis that for the first time the appellant had raised the issue of return to Northern Cyprus. The appellant is

a citizen of the Republic of Cyprus and the fact of return to Northern Cyprus had not been considered by the respondent. This issue was raised for the first time in a letter from the appellant's family solicitor in the context of pursuing his application under the Hague Convention. Mr Mavrantonis submitted that this was a new matter within the meaning of section 85 of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act) and that the respondent had a duty to consider it pursuant to section 55 of the Borders, Citizenship and Immigration Act 2009 (the 2009 Act). Mr Mavrantonis recognised that there had already been a significant delay in these proceedings but submitted that it was in large part due to the appellant being unrepresented and changing representatives.

32. Ms Renfrew opposed the adjournment request. She contended that the respondent's request was not sufficiently well justified to warrant an adjournment. She submitted that further delay in these proceedings would cause prejudice to the appellant. Ms Renfrew noted that the appellant's application under the Hague Convention is made on the basis that he is habitually resident in the United Kingdom. She also submitted that the respondent could have considered the issue, as the appellant's witness statement says that he was born in Northern Cyprus. I pointed out that this was not in fact correct and that he simply states that he is a national of Cyprus, and that he was educated in Nicosia, without specifying which part of Nicosia, which is divided between Northern Cyprus and the Republic of Cyprus. Ms Renfrew noted that the respondent had been represented at case management hearings and that her consistent position was that she was ready to proceed.
33. I refused the application for an adjournment. I considered that an adjournment was not in the interests of justice or in accordance with the overriding objective. The proceedings have been ongoing since 13 June 2022 with several case management hearings having taken place. Not once during that time had the appellant raised that he was from Northern Cyprus or that this would be his chosen place of residence in the event that he was removed. There was no satisfactory explanation as to why this issue had not been raised at an earlier juncture.
34. Having refused his application, I asked Mr Mavrantonis if he was ready to proceed. He confirmed that he was.
35. Ms Renfrew sought to ask the appellant a number of questions in evidence in chief. Mr Mavrantonis objected in light of the Practice Direction. I asked why, given that the appellant's statement was relatively recent, all evidence was not included in it. Ms Renfrew stated that the further evidence would provide an update on circumstances and in relation to the Hague Convention proceedings in Latvia. I noted that it had been apparent for some time that the appellant's daughter was in Italy and that this appeared to be the reason for what had happened in Latvia. Mr Mavrantonis confirmed that it was not disputed that the appellant's daughter was in Italy. I asked whether there was any change of circumstances such that further oral evidence was necessary. Ms Renfrew confirmed that there was not, and I therefore refused her request to call further evidence in chief. The terms of the Practice Direction are very

clear, and no good reason was provided as to why all evidence was not included in a witness statement.

36. Ms Renfrew also sought permission to have the three witnesses give additional oral evidence in chief. Ms Renfrew stated that their evidence would go to the appellant's residence in the United Kingdom and the risk he poses and that it is therefore material to the issues in the appeal. I noted that the appellant had had a change in representation in this appeal, but that since the change he had been effectively represented at case management hearings where the issues in the appeal had been discussed. I refused the application. The Practice Direction is clear that the witness statement of a witness should be capable of standing as the entirety of their evidence in chief. No reasonable explanation was provided as to why the letters from the witnesses did not address the issues, given that the risk posed by the appellant and whether he is entitled to benefit from the 2016 Regulations as saved have always been in issue in the appeal.
37. At the conclusion of the evidence, I asked the parties some questions relating to the ability of the appellant to pursue his Hague Convention application in Cyprus. In order to ensure that both parties had an adequate opportunity to address the questions I had raised, I adjourned the hearing and directed written submissions on three specific questions, with the appeal to resume for oral submissions in relation to all live issues at a later date.
38. On 24 January 2025 I made the following directions:
 1. By no later than 14 February 2025, the appellant must file and serve written submissions, which include reference to any relevant authorities, addressing the following narrow issues:
 - (i) Whether, as a matter of law, an order could be made pursuant to the Hague Convention for the return of the appellant's daughter to Republic of Cyprus rather than the United Kingdom if, at the time of the order, the appellant is habitually resident in the Republic of Cyprus.
 - (ii) If not, is this because the making of an order is dependent on the country of habitual residence of the child (prior to the unlawful removal) rather than the applicant parent?
 - (iii) If such an order is possible, as a matter of procedure, would the appellant be able to seek a variation of his pending application (i.e. to amend his country of residence and the place to which he seeks the return of his daughter), or would he need to make an entirely new application?
 2. By no later than 7 March 2025, the respondent must file and serve any written submissions in response, which include reference to any relevant authorities.

3. The parties are reminded that they will have a full opportunity to make oral submissions in relation to the issues in the appeal at the resumed hearing and that the purpose of the written submissions is to address the narrow issues identified above only.

39. The appellant's solicitor subsequently requested an extension of time until 21 February 2025, which I granted. I extended the time for the respondent's reply to 9:00 am on 14 March 2025. Both parties complied with directions.

The law and burden and standard of proof

40. Section 32(1) of the UK Borders Act 2007 defines a 'foreign criminal' as a person who is not a British citizen and who is convicted in the United Kingdom of an offence and is sentenced to a period of imprisonment of at least 12 months. Section 32(4) conclusively treats the deportation of a foreign criminal as conducive to the public good and section 32(5) provides that the respondent must make a deportation order in respect of a foreign criminal subject to section 33.
41. The appellant has a right of appeal against the respondent's decision to make a deportation order pursuant to regulation 6 of the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 (the 2020 Regulations). The grounds of appeal are that the decision breaches any rights he has under the Withdrawal Agreement or that the decision is not in accordance with section 3(5) or (6) of the Immigration Act 1971. He has a right of appeal against the refusal of his human rights claim pursuant to section 82 of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act). Pursuant to section 84 of the 2002 Act, the available ground of appeal is that the decision is unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Human Rights Convention).
42. Regulation 3(6) of the Grace Period Regulations provides where relevant:

'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 –

 - (a) 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
43. Article 20(1) of the Withdrawal Agreement provides that where the conduct of the individual occurred before the end of the transition period, restrictions on their right of residence and entry shall be considered in accordance with Chapter VI of Directive 2004/38/EC (the Citizens Directive).

44. Article 20(2) provides:

The conduct of Union citizens or United Kingdom nationals, their family members, and other persons, who exercise rights under this Title, where that conduct occurred after the end of the transition period, may constitute grounds for restricting the right of residence by the host State or the right of entry in the State of work in accordance with national legislation.

45. Article 21 provides:

Safeguards and right of appeal

The safeguards set out in Article 15 and Chapter VI of Directive 2004/38/EC shall apply in respect of any decision by the host State that restricts residence rights of the persons referred to in Article 10 of this Agreement.

46. Regulation 27(3) provides that a decision on the grounds set out in regulation 20(1) (a relevant decision) may not be taken against a person with the permanent right of residence under regulation 15 except on serious grounds of public policy or public health. Regulation 27(5) sets out the principles in accordance with which a relevant decision must be made:

- (5) The public policy and public security requirements of the United Kingdom include restricting rights otherwise conferred by these Regulations in order to protect the fundamental interests of society, and where a relevant decision is taken on grounds of public policy or public security it must also be taken in accordance with the following principles—
 - (a) the decision must comply with the principle of proportionality;
 - (b) the decision must be based exclusively on the personal conduct of the person concerned;
 - (c) the personal conduct of the person must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, taking into account past conduct of the person and that the threat does not need to be imminent;
 - (d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;
 - (e) a person's previous criminal convictions do not in themselves justify the decision;

- (f) the decision may be taken on preventative grounds, even in the absence of a previous criminal conviction, provided the grounds are specific to the person.

47. Regulation 27(6) sets out the factors the respondent must consider:

- (6) Before taking a relevant decision on the grounds of public policy and public security in relation to a person (P) who is resident in the United Kingdom, the decision maker must take account of considerations such as the age, state of health, family and economic situation of P, P's length of residence in the United Kingdom, P's social and cultural integration into the United Kingdom and the extent of P's links with P's country of origin.

48. Regulation 27(8) provides that the tribunal must have regard to the considerations contained in Schedule 1 to the 2016 Regulations when considering whether the requirements of regulation 27 are satisfied.

49. It is for the respondent to establish on the balance of probabilities that deportation is justified pursuant to the 2016 Regulations.

50. Part 13 of the Immigration Rules sets out when a person will be considered for deportation and when a deportation order will be revoked. It also applies where deportation is recommended by a court. Section 2 of Part 13 sets out the exceptions to deportation on article 8 of the European Convention on Human Rights (ECHR) grounds.

51. Paragraph 15 of Appendix EU of the Immigration Rules provides for when an application made under the EU Settlement Scheme (EUSS) will be refused on grounds of suitability.

52. Sections 117A to 117D of the 2002 Act provide the structure for an assessment under article 8 of the European Convention on Human Rights (ECHR) and it is inappropriate to conduct a further free-standing article 8 assessment outside the statutory structure. It is for the appellant to show that article 8(1) of the ECHR is engaged and if so, it is for the respondent to show that the decision was in accordance with the law, made in pursuance of a legitimate aim and that it was proportionate to the legitimate aim. The standard of proof is the balance of probabilities.

Findings and reasons

53. The issues for determination in this appeal are:

- (i) Do the 2016 Regulations as saved apply to the appellant?
- (ii) In the alternative, does the appellant come within the personal scope of the Withdrawal Agreement meaning that Chapter VI of Directive 2004/28/EC continues to apply to the appellant?

- (iii) If so, has the respondent justified the appellant's deportation with reference to the relevant provisions of the 2016 Regulations?
- (iv) If not, is the appellant's deportation a disproportionate and therefore unlawful interference with his rights pursuant to article 8 of the ECHR?
- (v) Would the appellant's deportation give rise to an unlawful interference with his rights pursuant to article 6 of the ECHR?
- (vi) Is the decision to refuse the appellant's application for leave to remain under the EUSS in accordance with the Withdrawal Agreement?

Do the 2016 Regulations apply to the appellant?

- 54. In order to satisfy this requirement, the appellant must meet the definition of 'relevant person' and show either that immediately before 31 December 2020 he was residing in the United Kingdom in accordance with the 2016 Regulations; or he had acquired a right of permanent residence.
- 55. The appellant contends that he had acquired a right of permanent residence and relies primarily on records from HM Revenue & Customs (HMRC) at pages 109 to 110 of the appellant's bundle. In particular, he relies on the evidence relating to the tax years 2013/14 to 2017/18, i.e. 6 April 2013 to 5 April 2018.
- 56. Mr Mavrantonis submitted that there was a lack of evidence to establish that the appellant had resided in the United Kingdom in accordance with the 2016 Regulations continuously for a period of five years prior to 31 December 2020. He contended that the HMRC records show that the appellant's employment was marginal or ancillary and therefore that the appellant was not a qualified person on the basis of his employment during that period. He calculated the appellant's average weekly earnings for the period and submitted that because they were below the personal income tax threshold, they were so low as to mean that the employment was marginal or ancillary. In addition, Mr Mavrantonis submitted that there was a lack of other evidence to demonstrate the appellant's continuous residence in the United Kingdom for a period of five years. He noted the lack of evidence such as Council Tax documents and utility bills which would demonstrate where he was living. The appellant explained this, stating that when he went to prison, he lost a lot of documents. In response to a question about why he had not called any friends who had known him before he went to prison to give evidence, the appellant stated that he had believed that the evidence should focus on his circumstances now and in any event, some of his friends had moved away and some people had passed away.
- 57. Ms Renfrew submitted that the appellant's economic activity through employment during the period was genuine and effective and not marginal or ancillary. She referred to his evidence at paragraph 13 of his witness statement, which was that between 2013 and 2018 he worked at Lodos Supermarket, initially for 16 hours per week and later 20 hours per week. He states that he was paid the minimum wage at the time and that he left the job in 2018. He explains that the references to Telmix Ltd

and Rector Ltd T/A Lodos Supermarket are references to the same employment, as the company changed its name.

58. Ms Renfrew relied on a number of authorities relating to the definition of 'worker' in EU law. The principles which can be drawn from those authorities can be summarised as follows:

- (i) Because freedom of movement for workers is one of the fundamental principles of the Community, and because it defines the scope of that fundamental freedom, the term 'worker' must be interpreted broadly.
- (ii) The essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration.
- (iii) A person is a worker if they earn less than what is considered the minimum required for subsistence provided that they pursue an activity as an employed person which is genuine and effective.
- (iv) A person engaging in genuine and effective work is not excluded from qualifying as a worker simply because their income received from that work is less than the minimum required for subsistence, and they seek to supplement it by other lawful means of subsistence.
- (v) The fact that a worker's earnings do not cover all his needs cannot prevent him from being a member of the working population. Employment for as few as ten hours per week can be sufficient to qualify as a worker.
- (vi) Work will be subsidiary or ancillary if it is done pursuant to some other relationship between the parties which is not an employment relationship.
- (vii) The duration of work is a relevant factor but is not determinative. Work as a steward at Wimbledon for a period of two weeks was of economic value because if the appellant had not performed the service, someone else would have had to have been employed. It was not ancillary to another relationship with Wimbledon and was not marginal because of the rate of remuneration.

59. The principles summarised above rely on employment being genuine and effective. It is therefore necessary to consider any guidance in relation to what genuine and effective means. In C-359/89 Raulin v Netherlands Ministry of Education and Science it was held that employment will not be genuine and effective where activities are on such a small scale as to be regarded as purely marginal or ancillary.

60. Although Mr Mavrantonis sought to establish in cross examination that the appellant had travelled outside the United Kingdom through an analysis of his bank statements for the period ending in the 2017/18 tax year, he did not challenge the appellant's evidence about his employment contained in his witness statement and I find that I can place weight on it. The appellant's evidence is that he was employed by the same

employer (albeit that there was a change in the name of the employer) between 2013 and 2018. He worked in a supermarket for 16 hours per week, rising to 20 hours per week. There is nothing to suggest that his employment did not comply with the three essential elements identified at paragraph 53(ii) above, and I find that it did. Similarly, there is no evidence to suggest that the appellant's employment had no economic value. I find that it did, as it is not credible that he would have been employed for such a lengthy period if his work had no economic value to his employer.

61. The appellant states in his witness statement that he was arrested twice during the period. The first time was in 2017, and he was held at a police station for one night (paragraph 15, witness statement). The second time was in 2018, and he was held on remand for six months. According to the trial record sheet (page 29, respondent's bundle), the appellant's offending took place between 1 January 2016 and 30 June 2018 (conspire to steal) and 1 November 2015 and 1 December 2018 (conspiracy to handle stolen goods). Given the dates of the offending, I find that it is more likely than not that the appellant was not remanded in custody during the 2017/18 tax year, which ended on 5 April 2018. Accordingly, I find that I can take into account the entirety of the records of the appellant's employment between 2013/14 and 2017/18.
62. As to Mr Mavrantonis' attempt to show that the appellant was outside the United Kingdom during the period, I find that the evidence does not demonstrate that the appellant was absent from the United Kingdom for periods that would interrupt the continuity of his residence. Regulation 3 of the 2016 Regulations provides that periods of absence from the United Kingdom which do not exceed six months in total in any year will not affect continuity of residence. The bank statement at pages 85 to 87 shows both foreign transactions and transactions completed within the United Kingdom on the same day, for example, 17 May 2017. There are several transactions in the United Kingdom recorded on that date and I find that he was in the United Kingdom on that date. I find that foreign transactions can be explained by a delay in them appearing on the appellant's bank statement, or alternatively that this was the date on which he returned to the United Kingdom and so spent part of the day abroad and part of the day in the United Kingdom.
63. In respect of transactions apparently showing the appellant abroad on 24 May 2017 to 26 May 2017, this is not material. It is a period of three days and transactions on 24 May 2017 and 27 May 2017 show the appellant in the United Kingdom. None of the transactions show the appellant being absent from the United Kingdom for more than six months in any 12 month period. Mr Mavrantonis did not draw my attention to any other transactions he considered demonstrated the appellant's absence from the United Kingdom.
64. The appellant's bank statements show balances ranging between relatively low credit balances to being up to around £2,500 overdrawn. This is consistent with his low income earned from part time employment. As the principles outlined above confirm, the mere fact that a person supplements their income from employment by other means, in this case an overdraft, this does not disqualify them from being considered a worker within the meaning of regulation 6.

65. I find on the balance of probabilities that the appellant has demonstrated that he was residing in the United Kingdom in accordance with the 2016 Regulations continuously for a period of five years ending on 5 April 2018 and accordingly that he had acquired the right of permanent residence prior to his conviction and imprisonment. This was prior to 31 December 2020.
66. I find therefore that the appellant is a 'relevant person' for the purposes of regulation 3(6) of the Grace Period Regulations and that he is entitled to the benefit of the 2016 Regulations as saved. This means that the respondent must justify the appellant's deportations on serious grounds of public policy or public security.
67. I note for the sake of completeness that I have not taken into account any of the appellant's self employment in his company Test Cars. This is because the business was the means by which the appellant committed the offences of which he was convicted. As set out in the trial record sheet, the offending took place between 1 November 2015 and 1 December 2018. I am therefore not prepared to accept that the appellant was deriving income from lawful self employment during that period. In any event, it is not material given my findings above.

Is the appellant's deportation justified on serious grounds of public policy or public security?

68. Regulation 27(5) sets out the principles in accordance with which a decision must be taken and regulation 27(6) sets out factors which must be taken into account. In order to assess whether or not deportation is justified it is necessary to look at the risk the appellant will cause harm by further offending. That requires an evaluation to be made of the likelihood that he will offend again and what the consequences are likely to be if he does. The right of free movement needs to be balanced against the risk of harm.
69. The terms 'public policy' and 'public security' are not defined in the 2016 Regulations. I am satisfied that public policy includes the policy that is reflected in the interest of the state in protecting citizens from crime generally.
70. I am satisfied that the respondent's decision was taken solely on the basis of the appellant's own conduct. There is no suggestion that the decision was taken based on factors isolated from the particulars of the case or that it was taken on grounds of general prevention.
71. In order for deportation to be justified, the appellant's conduct must represent a genuine, present and sufficiently serious threat to one of the fundamental interests of society.
72. The threat must be sufficiently serious, which phrase is not defined in the 2016 Regulations. What it means is that the threat must be sufficiently serious as to engage one (or more) of the fundamental interests of society.
73. The fundamental interests of society are set out in Schedule 1 to the 2016 Regulations and I find that the following are engaged: maintaining public order; preventing social harm; and excluding the family member of an EEA national with a conviction and

maintaining public confidence in the ability of the relevant authorities to take such action.

74. I have considered the appellant's conviction for carrying on a licensable activity on/from premises other than in accordance with an authorisation. This was in 2010 and there is no evidence that the appellant has committed any further offences. I note that he received a fine, indicating that it was an offence at the lower end of the scale. I give it little weight.
75. The appellant's index offences were serious, reflected by the fact that he received a sentence of six years' imprisonment for each offence, to be served concurrently. The sentencing remarks demonstrate the fact that the appellant's assertions that he did not know what was going on were rejected:

It seems to me inescapable that you had been running this conspiracy with others for some considerable time before you brought Mr [I] into it. The conspiracy, in short summary, was a cynical undertaking, with you engaged with people who were exploiting the vulnerable but ultimately dishonest to enter into finance agreements they never intended to keep, obtaining cars and then passing them on to you and your confederates, no doubt for financial reward.

76. The judge found that the gross value of the cars involved exceeded £1 million and was therefore substantial. The sentencing judge described the appellant as a principal actor in the enterprise. The judge found that the appellant fell within category culpability A and category harm 1, for which the starting point was five years imprisonment, with a range of between three and eight years. The judge considered that his arrest in September 2017 was a serious aggravating feature, as it had failed to serve as a warning to the appellant and he continued to lead what the judge described as a considerable criminal enterprise. The judge had little confidence at the time of sentencing in the prospects of the appellant's rehabilitation and found that there was no mitigation save that he had few and negligible previous convictions.
77. The appellant does not appear to have expressed any remorse. In addition, it took some time for him to accept any responsibility for his offending, although I accept that he has now done so to some extent. I am satisfied that the threat the appellant poses is a genuine one.
78. I therefore consider whether the threat is a present one, which is relevant to the question of whether there is a likelihood that the appellant will behave in the same way (i.e. reoffend) in the future.
79. The appellant relies on 4 pieces of evidence regarding the risk he poses. There are two letters from the Probation Service dated 16 June 2021 and 19 July 2021. The first states that the appellant had been working with Essex Probation since his release on 24 June 2022 and that he had engaged very well and had developed and maintained stabilising factors in the community. The second states that the appellant was transferred to an open prison in February 2021. The fact of his transfer is stated to be proof that he was

entirely compliant with prison service rules since the beginning of his sentence. It states that there were many positive case notes demonstrating his good behaviour and attitude. He is stated to have been a senior member of the Offenders Consultative Committee and as such engaged with the Governor and members of the senior leadership team of the prison.

80. The third piece of evidence is an OASys report. This is not dated. From experience I am aware that the date in the header and footer of the document is the date on which it is printed, not the date on which it is completed. It was printed in June 2022, and I find that it is likely that it was prepared in advance of the appellant's release from custody. It is a more recent assessment of risk than the OASys report contained in the respondent's bundle, which was completed on 24 May 2021. Although I have taken the OASys report in the respondent's bundle into account, I place more weight on the more recent report contained in the appellant's bundle.
81. The appellant's Offender Group Re-Conviction Scale (OGRS 3) score is assessed as follows:
 - (i) General offending within 1 year of discharge - 14%.
 - (ii) General offending within 2 years of discharge - 25%.
82. The OGRS 3 is an actuarial risk assessment tool which takes into account a person's age at time of current conviction, type of offence, prior criminal history and gender. The percentage score is a probability of reconviction.
83. The appellant's risk of serious recidivism score is 0.36%, which is low.
84. The appellant's OASys Violence Predictor (OVP) score is assessed as follows:
 - (i) 1 year score - 7%
 - (ii) 2 year score - 12%
85. The OVP risk of reoffending is assessed as low. The OVP assessment estimates the likelihood of nonsexual violent offending including homicide and assault, threats and harassment, violent acquisitive offences (e.g., robbery and aggravated burglary), public order, non-arson criminal damage and weapon possession offences.
86. The fourth piece of evidence is a letter from the Probation Service dated 8 July 2024. It confirms that the appellant remains subject to licence conditions until 23 May 2025, but that he has not been subject to a requirement to attend probation appointments since 1 July 2024. The author of the letter, a probation practitioner, states that the appellant has engaged very well since his release into the community, attending all appointments and maintaining telephone contact, including to report any change in his personal circumstances. It is stated that the appellant 'has clearly taken time to reflect on his offence and has worked on a 1-2-1 basis to evidence his learning achieved during his time in custody and since release'.

87. The letter contains an assessment of the risk of reconviction, using the OGRS tool (see above), and is assessed as posing a low risk.
88. I also take into account the appellant has now been living in the community since June 2022, a period of more than two and a half years. He has not reoffended, which I give some limited weight, as it is no more than is expected of him. I place greater weight on the fact that the risk factors identified in the OASys report have not become active risk factors. The identified risk factors were:
- (i) Education, training and employability. These are linked to his offending behaviour but not the risk of serious harm. The appellant has been employed since his release from prison. The appellant has skills and experience which mean that he is employable and there are no current concerns in relation to this factor.
 - (ii) Financial management and income. These are linked to his offending behaviour but not the risk of serious harm. The OASys report notes that the appellant derived significant income from his offending, which he was using to support his lifestyle. The OASys report states that the appellant received sums of money from family and friends while in prison, but it was not considered that he had an over-reliance on them for financial support. There were no concerns as to the appellant's ability to budget. There is no evidence of any current concerns in respect of financial management or income before me.
 - (iii) Relationship issues. These were stated to be linked to both the risk of serious harm and the appellant's offending behaviour. It is acknowledged that any threat was not imminent and for the reasons give above, I place more weight on the more recent evidence for my conclusion that they are not current concerns.
 - (iv) Lifestyle and associates. These were not considered to be linked to the risk of serious harm but were linked to the appellant's offending behaviour. It is stated that there was no evidence that the appellant was influenced by others and that as the director of the company that was involved in exporting stolen cars, he was considered to be the ringleader of the criminal enterprise. The appellant has not reoffended and there is no evidence before me that there is any current concern about the appellant's lifestyle or associates.
 - (v) Thinking and behaviour. Again, this was identified as being relevant to the appellant's offending behaviour but not the risk of serious harm. The OASys report states that the appellant 'displayed an inability to recognise problems and poor problem solving skills on this offending. He has shown a clear lack of consequential thinking suggesting some deficits in his thinking skills. The fact that he has not shown any understanding as to the reasons for him committing this offence and his continued denial of the offence raises more concerns in relation to his thinking skills'. As set out above, the Probation Service considers that the appellant has reflected on his offence and evidenced his learning during his time in custody and since release. I find that there is some evidence that the

appellant has addressed the concerns surrounding this factor and that there is no evidence that they pose a current concern.

89. The appellant is assessed as posing a risk of serious harm to his former partner, potential future partners and his daughter. The risk is stated to arise in the context of physical and emotional harm from potential domestic abuse if the appellant fails to control his temper and displays aggressive and controlling behaviour. This appears to be based on the fact that the appellant has a caution for common assault on 26 March 2016.
90. The appellant was asked about this in cross-examination and described the circumstances of the offence. He stated that he and his former partner had an argument when she came home drunk and was trying to hit him. He stated that he pushed her. The appellant stated that he went to the police station where he signed a paper and was then permitted to leave. He stated that he did not realise that he was in fact issued with a caution. The assessment that the appellant poses a risk to his daughter appears to be based on an assumption that she was at home at the time of the incident and may have witnessed it. There is no reference in the OASys to the appellant having posed any direct risk to his daughter.
91. The risk of serious harm is assessed as being medium in relation to children and a known adult. A medium risk of serious harm means that there are identifiable indicators of risk of serious harm. The offender has the potential to cause serious harm but is unlikely to do so unless there is a change in circumstances, for example, failure to take medication, loss of accommodation, relationship breakdown, drug or alcohol misuse.
92. The assessment of the risk of serious harm in the OASys report is superseded by the letter dated 8 July 2024 from the Probation Service. It is stated in that letter that as of 13 June 2024, the appellant was assessed as posing a low risk of serious harm in all categories.
93. There is other evidence before me which is relevant to the assessment of the risk of serious harm the appellant may pose to his former partner, his daughter or a potential future partner. This is the evidence from the Family Court regarding allegations of domestic abuse made by the appellant's former partner.
94. The appellant's former partner's allegations about his behaviour towards her were the subject of a fact finding hearing in the Family Court. The Family Court ordered staying contact between the appellant and his daughter in October 2018. This was to take place every other weekend from Friday to Sunday. Additional contact every Wednesday in a non-staying contact week and half of all half term and full term nursery/school holidays and at least 14 days continuous staying contact during the summer holidays, with the appellant given permission to take his daughter out of the United Kingdom for the purposes of a holiday.
95. In an order dated 9 February 2021, which followed a hearing of the same date, it is stated that safeguarding checks had been carried out by Cafcass, and it was found that

there were no safety issues. The hearing was in relation to the appellant's application for a child arrangements order following the breakdown of contact while he was in prison. It appears that it was at this hearing that the appellant's former partner made allegations of abuse against him. The order records that the appellant denied the allegations but freely admitted the incident in 2016 which led to the caution. The judge decided that a fact finding hearing was required and made directions accordingly.

96. The fact-finding hearing concluded on 7 April 2022 with the Court expressing the clear view that 'there were no safeguarding concerns which would prevent [the appellant's daughter] from having unsupervised direct contact with her father commencing as soon as possible'. A limited finding of abusive behaviour by the appellant towards his former partner was made (the details of which were not before me), but it has held that there was no pattern of coercive or controlling behaviour either during the relationship or post separation, as had been alleged by his former partner. Arrangements as to contact were then made, beginning with indirect contact, progressing to fortnightly supervised remote contact via Zoom, weekly supervised Zoom calls, in person contact at a supervised contact centre, and finally supported contact in the community.
97. I find that the appellant does not pose a present threat to his former partner or his daughter. This is because they are in Italy and there is no contact between them, direct or indirect. I find that there is no present threat to another partner, as there is no evidence before me that the appellant is currently in a relationship. I give little weight to the appellant's caution for common assault, and I do not accept that it contributes in any meaningful way to the respondent's ability to justify the appellant's exclusion from the United Kingdom on serious grounds of public policy or public security.
98. In respect of the appellant's index offences, I find that he poses a low risk of reoffending. This does not mean no risk and I give it some weight. However, for the reasons set out above, there is no evidence that there are any current concerns about the risk of reoffending and as I have found, none of the identified risk factors that might lead to an increased risk of reoffending are currently active.
99. The appellant is a 54-year-old man and there was no evidence before me that he is in anything other than good health, aside from what appear to be some minor difficulties sleeping which are linked to his current circumstances. He is of working age and is in full-time employment in the United Kingdom.
100. The appellant's evidence is that he has resided in the United Kingdom since 2002. There is limited documentary evidence of this. I accept as being more likely than not that the appellant did in fact lose many of his documents when he went to prison. This is not uncommon, particularly when accommodation is lost. In addition, even if the appellant had not lost his possessions, the likelihood is that documents which would establish his early residence may no longer be available after such a lengthy period. I find on the balance of probabilities that the appellant first came to the United Kingdom in 2002. There is no evidence of any extended periods of absence, and I accept that the appellant has lived in the United Kingdom since 2002.

101. The appellant states that he was born in Northern Cyprus. It is not clear as to the extent of the appellant's ties to either Northern Cyprus or the Republic of Cyprus. He is a citizen of the Republic and therefore has the rights and entitlements of a citizen. He also has the right of free movement within the EU.
102. It appears that the appellant's mother was living with him in the United Kingdom, but it is unclear what the current position is with respect to her or any other family members. There was no evidence from any of them and the appellant is silent on this point in his witness statement.
103. The appellant was an adult when he came to the United Kingdom, and I find that it is more likely than not that the appellant retains some social and cultural ties to Northern Cyprus where he grew up. I note the remarks of the sentencing judge which supports my view:

Almost without exception, these were new or newish, high-value vehicles which, to avoid detection, you speedily arranged to be taken overseas, exploiting your connections in both Germany, Turkey and Northern Cyprus.

104. Although the evidence was extremely sparse, I am prepared to accept that in the time he has lived here, some 23 years, the appellant has become socially and culturally integrated in the United Kingdom. He is in full time employment and has established social ties as evidenced by the witness statements. He established a relationship and had a child in the United Kingdom albeit that the relationship subsequently broke down. Based on the Family Court evidence before me, I find that but for the actions of the appellant's former partner, he would be having contact with his daughter in the United Kingdom accordance with the orders made. He is taking all possible steps to regain contact with his daughter.
105. The appellant acquired the right of permanent residence. His conviction and imprisonment are capable of disrupting his social and cultural integration, but once lost, integrative links can be regained as contemplated by the Upper Tribunal in Bossade [2015] UKUT 00415 (IAC). I find the appellant regained his integrative links after his imprisonment. This is because he has re-entered employment, he is approaching the end of his licence period, which to date he has engaged with successfully, and he has not been convicted of any further offences.
106. The appellant is now employed in the car industry for a company which buys and sells cars. This is significant, as it is precisely the type of activity in which his business was engaged when he committed his offences. He sets out in his witness statement his awareness of the importance of ensuring that any cars purchased do not have outstanding finance and the steps he took on one occasion when he discovered that a car, he intended to purchase was still subject to outstanding finance. The appellant has shown an awareness of issues linked to his offending and a commitment to ensuring that he takes all steps to becoming involved in such offending again. It is also

significant that his employer agreed to employ him in the knowledge of his convictions, demonstrating a degree of trust in the appellant.

107. The appellant is engaged in proceedings in the United Kingdom in relation to his daughter. He has an outstanding application for a child arrangements order and an application under the Hague Convention for his daughter's return from Italy. The child arrangements application is currently stayed pending the outcome of the Hague Convention application. The Hague Convention application is at early stages, it having initially been made in Latvia and then transferred to Italy on the basis of evidence that this is where the appellant's daughter and former partner now reside.
108. The appellant argued that he would be prejudiced in those proceedings if he were removed from the United Kingdom. I have considered the submissions received from both parties on the three questions I posed. I find that it is possible for an order to be made for the appellant's daughter to be 'returned' to a third country, i.e. the Republic of Cyprus, rather than the United Kingdom. I accept that article 12 of the Hague Convention does not prevent such an order being made and the respondent has cited case law to demonstrate that it can.
109. I find that it is likely that the appellant could pursue the Hague Convention proceedings from the Republic of Cyprus, which is the country of which he is a citizen and to which it is proposed he will be returned. Whether the proceedings would result in an order being made for the appellant's daughter to be returned to Cyprus however is a different question. I accept that the Hague Convention proceedings consider the country of habitual residence of the child and not the parent. The country of habitual residence of the appellant's daughter is the United Kingdom (unless a finding is made that it has changed since she was taken from the United Kingdom). It appears likely that the country of return will in most circumstances be the country of habitual residence of the child, but that there *may* be circumstances in which it would be against the interests of the child for that to be the destination of return. I recognise that this is an obiter comment, but it was one made by Lord Hughes in the Supreme Court in Re C [2019] AC 1 and can be viewed as one which carries some persuasive weight.
110. At this point it is simply not appropriate to speculate as to what the outcome of the Hague Convention proceedings will be. As I have already said, they are at a fairly early stage, with the Central Authority in Italy in the process of making enquiries. If a return order to the United Kingdom is made, that will have the effect of the Family Court in the United Kingdom being responsible for determining what is in the best interests of the appellant's daughter and for determining the outcome of the appellant's application for a child arrangements order.
111. The submissions before me suggest that there is nothing to demonstrate that the appellant will have to make a new application under the Hague Convention in the event he is removed, but at the very least, I consider it is reasonably foreseeable that the proceedings will be subject to further delay. This is evidenced by the delay that has been caused by the fact that there has been delay as a result of the appellant's former partner moving to Italy and the need for the transfer of the proceedings to that country.

In addition, there is likely to be delay caused by the appellant needing to find new legal representation, or in the alternative, act as a litigant in person in a different legal system with different procedures.

112. Furthermore, if an order is made for return to the United Kingdom rather than Cyprus, there will be additional difficulties for the appellant in pursuing proceedings in the United Kingdom from Cyprus. On more than one occasion, the Family Court has made orders that the parties attend proceedings in person in the United Kingdom. It was considered important even though both the appellant and his former partner were legally represented. The Family Court found that it was necessary in the interests of justice to direct in-person hearings, even though it has the capacity to hear evidence and conduct hearings by video. If he is deported the appellant will not have the ability to attend hearings in person.
113. The appellant first applied for a child arrangements order in 2018. This was prior to his conviction for the offences which gave rise to deportation proceedings, and it is not the case therefore that the timing of the application gives rise to any adverse inference.
114. I find that there is a real risk that the appellant will not be able to participate in the Hague Convention proceedings and/or proceedings in the Family Court in the United Kingdom effectively or at all if he is removed from the United Kingdom. This is a factor to which I attach significant weight.
115. Having considered all of the factors above, I find that the respondent's decision does not comply with the principle of proportionality, and I find that the appellant does not pose a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. I have considered all the matters referred to above, but the key factors that have contributed to this finding are:
 - (i) The assessed low risk of re-offending and serious harm.
 - (ii) The appellant's social and cultural integration in the United Kingdom, which was not interrupted by his imprisonment.
 - (iii) The appellant's employment since his release in a role which can be said to be linked to his offending, without any concerns.
 - (iv) The personal factors outlined above.
 - (v) The ongoing proceedings pursuant to the Hague Convention and in the Family Court in the United Kingdom, the uncertainty of the outcome of those proceedings, and the fact that the appellant's ability to participate effectively in them will be significantly hampered, if not removed altogether.

Is the respondent's decision to refuse the appellant's EUSS application contrary to the Withdrawal Agreement?

116. My decision that the respondent has failed to discharge the burden of justifying her decision on serious grounds of public safety or public security means that the

respondent's decision breaches the appellant's rights under the Withdrawal Agreement.

Is the respondent's decision to refuse the appellant's human rights claim proportionate?

117. In light of my findings above, I find that the appellant enjoys private life in the United Kingdom. The respondent's decision causes an interference with his enjoyment of his private life, and I am satisfied that the likely consequences of the decision are sufficiently serious as to engage article 8 of the ECHR. There was no dispute that the decision was made in accordance with the law or in pursuit of a legitimate aim and I find that it was.

118. My decision that the respondent has failed to discharge the burden of justifying her decision on serious grounds of public safety or public security, is determinative of the question of proportionality pursuant to article 8 of the ECHR. The decision to refuse the appellant's human rights claim is disproportionate and therefore unlawful under section 6 of the Human Rights Act 1998.

Does the respondent's decision give rise to a breach of article 6 of the ECHR?

119. I have found that difficulties the appellant is likely to experience in pursuing his application under the Hague Convention and his application in the Family Court in the United Kingdom carry significant weight in the proportionality assessment required under the 2016 Regulations. I do not accept however that there is sufficient evidence before me to demonstrate that this would amount to a flagrant breach of his rights pursuant to article 6 of the ECHR. Cyprus is a signatory to the Hague Convention and there was no evidence that it has not put in place appropriate measures to allow applications to be made and pursued.

Notice of Decision

The appeal against the decision to refuse the EUSS application is allowed.

The appeal against the refusal of the appellant's human rights claim is allowed.

Signed

Date 18 March 2025

Judge J K Swaney
Judge of the First-tier Tribunal

TO THE RESPONDENT - FEE AWARD

I have allowed the appeal and have decided to make a whole fee award of £140 because the appeal was allowed on the grounds pleaded.

Signed

Date 18 March 2025

Judge J K Swaney
Judge of the First-tier Tribunal