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12. Section 3(5) (a) - Deportation on conducive grounds

The Secretary of State may decide that a person's deportation is conducive to the public good if (amongst other things):

- ◆ he has been convicted of a serious offence or has a series of comparatively minor convictions and where the court did not recommend deportation;
- ◆ he has obtained indefinite leave to remain by deception (but see also: Administrative Removal Procedures chapter 51)

12.1. Deportation following a conviction

There are many reasons why a Court may decide not to recommend deportation under section 3(6), most commonly because its attention was not drawn to its powers in this respect or the judge decided to leave the matter to the Secretary of State. Consideration will be given to deportation on conducive grounds if the person has one conviction for a serious crime or several convictions for less serious crimes which, taken together and weighed against any compassionate circumstances, merit deportation. The fact that a court has decided not to make a recommendation does not debar the Secretary of State from taking such action himself but would be taken into account in consideration of the case.

12.2. Obtaining indefinite leave to remain by deception

Where there is clear evidence that a person obtained, prior to 1 October 1996, settlement by deception, refer to the relevant casework section. The standard of proof must demonstrate a high degree of probability. **See also:** Administrative Removal Procedures for cases where the deception was practised after 1 October 1996.

12.3. Conducive deportation of EEA nationals

European law (Council Directive 2004/38/EC) provides that nationals of EEA Member States may be expelled from the territory of another Member State only on grounds of public policy, public security or public health. Swiss nationals also fall to be considered as if they were EEA nationals. Therefore, in order for an EEA national (or a member of their family) to be deported on public policy grounds we need to be satisfied that the person's conduct constitutes a present threat to the requirements of public policy.

Any decision that is made to remove an EEA national (or the family member of an EEA national) for public policy reasons would attract an in country right of appeal (Regulation 26 of The Immigration (European Economic Area) Regulations 2006).

Deportation cases involving EEA nationals normally arise when the Border and Immigration Agency is notified (usually by the police, a prison or a court) that an EEA national, or the family member of an EEA national (who may not themselves be an EEA national), has been convicted of a criminal offence. The case-worker must decide whether deportation on public policy, public security or public health grounds is justified.

Any decision to remove must be taken in accordance with the principles laid down in Regulation 21 of The Immigration (European Economic Area) Regulations 2006. Case-workers would need to consider the following:

- ◆ A person must have been convicted of a serious offence normally attracting a custodial sentence of 12 months or more where the conviction was for a drugs, sex or violent offence or in other cases where the sentence received was for 24 months or more.
- ◆ **The principle that a person can only be removed if they present a, “genuine, present and sufficiently serious threat” requires that the subject’s history and previous convictions provide evidence of a propensity to re-offend.** Even extremely serious offences such as rape, murder and drugs offences can only lead to the removal of a person with the right to reside here under EEA law where there is a propensity to re-offend.
- ◆ Is the decision to remove proportionate? The following factors should be considered:
 - ◆ The person's age, state of health and family and economic situation;
 - ◆ His/her length of residence in the UK;
 - ◆ His/her social and cultural integration into the UK; and
 - ◆ The extent of the person's links with his/her country of origin.

A person who has resided in the UK for the previous 10 years or is a minor can only be removed on **imperative grounds of public security**. In the case of a minor, this would not have to be the case where removal is necessary in the child's best interest, e.g. when their parents are deported. There is currently no definition of "**imperative grounds of public security**", although the crimes committed would involve national security matters or crimes that pose a particularly serious risk to the public or a section of the public.

It is current policy to deport EEA Nationals under Section 3(5) (a) of the 1971 Act, i.e. on conducive grounds, even where they are recommended for deportation by a Court.

Whilst we would not deport an EEA national or the family member of an EEA national on the basis of a Court Recommendation alone, this would be taken into account when assessing whether deportation action is appropriate.

12.3.1 Criminal Casework - Consideration for Non EEA Nationals

Relevant considerations

Where the criminal case deportation criteria is met the presumption is that the person's continued presence in the UK is not conducive to the public good. However it is still necessary to consider the offences committed (and previous convictions), the circumstances of them, the judge's sentencing remarks and any other reports, and decide, in the light of these, whether this presumption still stands.

Relevant factors that must be taken into account include:-

- ◆ **Age:** Where the person is aged under 18, is unaccompanied (or has family here with indefinite leave), and no adequate reception and accommodation arrangements exist in the country of origin (through the presence of family or otherwise). In such circumstances deportation should normally be deferred until the person turns 18.
- ◆ **Length of residence in the UK:** Where the person has been resident in the United Kingdom for 25 years or more (not counting periods in custody), unless he has been convicted of a serious offence.
- ◆ **Strength of connections to the UK:** Where the person has spent the majority of their formative years (from 0-10 years old) in the UK and has been resident here since.

- ◆ **Links with country of origin:** Where the person has no family in their country of origin, doesn't speak the language, and has not lived in that country for a significant period.
- ◆ **Domestic circumstances:** Where the person is married or in a civil partnership or has children (including children living with or in regular contact with the person) and there are insurmountable obstacles to the family accompanying them. Refer to paragraph 6.2 of the API on Article 8 for information on insurmountable obstacles.

The factors that must be considered here are not limited to what would be relevant under the Human Rights Act. However it will only be in exceptional circumstances that the public interest might be outweighed by compassionate circumstances where the deportation would be lawful under the Human Rights Act.

Consideration of human rights issues

Consideration must be given to whether deportation would be compatible with the Human Rights Act. While in the particular case any of the convention rights may be engaged, issues in deportation cases will most commonly relate to Articles 3 and 8.

Article 3

Article 3 is an **absolute** right. This prohibits the deportation of someone where doing so would lead to a real risk of them being tortured or receiving inhuman or degrading treatment or punishment. Further guidance on Article 3 issues is in the API on Humanitarian Protection.

Under Article 3, and with regard to paragraph 364, it may be appropriate to give particular weight contrary to the presumption towards deportation where the person has an illness that:

“Has reached such a critical stage (i.e. he is dying) that it would be inhuman treatment to deprive him of the care he is currently receiving and send him home to an early death, unless there is care available there to enable him to meet that fate with dignity.” (Baroness Hale, Para.69 of *N v SSHD*, 5th May 2005)

Article 8

Article 8 is a **qualified** right: it states that someone's right to privacy and family life can only be interfered with in order to meet a legitimate aim, and that interference must be proportionate. Further guidance on Article 8 issues, can be found on the API on Article 8.

The legitimate aims in relation to Article 8 in deportation cases are likely to be either public safety and/or the maintenance of an effective immigration control. While these are not expressly mentioned in the article they have been established as a legitimate aim in caselaw. There is a strong public interest in maintaining both.

The key concept in Article 8 considerations is **proportionality**. The more serious the nature of the offence, the sentence given, or the previous criminal history of the person concerned, the less likely it is that other relevant factors will outweigh the presumption towards deportation.

As a guide: murder, a terrorism offence¹, a drug trafficking offence², a serious immigration offence³, or a sexual or violent offence carrying a maximum penalty of 10 years or more⁴ are considered more serious than other offences. For a comprehensive list of serious offences refer see 67.3.

The recent House of Lords judgment on Huang stated that the Immigration Rules alone could not be taken to strike the appropriate balance between individual and collective rights for the purposes of assessing Article 8 proportionality; consideration must be given to Article 8's relevance to all of circumstances of the case and while the Rules remain a legitimate consideration, a broader view must be taken.

In considering the proportionality of removal under Article 8, it may be appropriate to give particular weight contrary to the presumption towards deportation in the following compassionate circumstances:

- ◆ **Age** – where a person is under 18, unaccompanied (or has family here with indefinite leave), and no adequate reception and accommodation arrangements exist in the country of origin
- ◆ **Length of residence in the UK** – where a subject has been residing in the UK for 25 years or more (excluding time spent in custody).

¹ Offences committed under the Terrorism Act 2000, the Anti-Terrorism, Crime and Security Act 2001, the Prevention of Terrorism Act 2005 and the Terrorism Act 2006. [Non disclosable: Where any of these offences have been committed, caseworkers should check circumstances with SCU in SCD. End of non disclosable section]

² As set out in schedule 2, para 1 of the Proceeds of Crime Act 2002

³ S.25, s.25A, s.25B of the Immigration Act 1971 and s.4 of the Asylum and Immigration (Treatment of Claimants) Act 2004.

⁴ Offences in Schedule 15 of the Criminal Justice Act 2003 that are defined as serious in s.224 of the same Act

- ◆ **Strength of connections to the UK** - where a person has been in the UK for the majority of their formative years (age 0-10 years old) and has been resident here since.
- ◆ **Lack of links to country of origin** - where a person has no family in their country of origin, doesn't speak the language and has not lived in that country for a significant period
- ◆ **Domestic Circumstances** – where a person is married or in a civil partnership, or has children and there are insurmountable obstacles to removing the family accompanying.

Concessions

Consideration will be given to any published concession potentially applicable. These concessions are not entitlements and should not be applied automatically. Concessions applied to foreign national offender cases will take into consideration the presumption that the public interest requires deportation.

Published concessions include:

- ◆ DP 4 & 5 /1996 - Child' concession