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Our Ref L1435518

Mr Jamal Lomp  
Huis van Bewaring Zwaag  
Postbus 4231  
1620 HE HOORN  
Netherlands

Date 1 July 2013

## REASONS FOR EXCLUSION

Dear Mr Lomp

1. On 28 October 2009, at Kingston Crown Court you were convicted of cause grievous bodily harm with intent to do grievous bodily harm. This is considered to be a particularly serious offence and consideration has therefore been given to whether your exclusion from the United Kingdom is justified on the grounds of public policy or public security.

### The Immigration (European Economic Area) Regulations 2006

2. Under Regulation 19(1B) of the Immigration (European Economic Area) Regulations 2006 (as amended) (the '2006 Regulations'), the Secretary of State may exclude an EEA national, or family member of an EEA national, from the United Kingdom where it is decided that the person's exclusion is justified on the grounds of public policy, public security or public health.

3. Any such exclusion is required to be in accordance with Regulation 21 of the 2006 Regulations. This regulation states that an EEA national, or a family member of an EEA national, who has a right of permanent residence in the United Kingdom can only be excluded on serious grounds of public policy or public security and that an EEA national who has resided in the United Kingdom for a continuous period of at least 10 years prior to the exclusion decision may only be excluded on imperative grounds of public security.

4. Regulation 15 of the 2006 Regulations sets out the circumstances in which a person acquires a right of permanent residence. An EEA national or a family member of an EEA national who has resided in the United Kingdom in accordance with the 2006 Regulations for a continuous period of five years acquires a right of permanent residence.

5. According to paragraph 6 of Schedule 4 to the Regulations, where someone resided in the UK before the accession to the EU of their state of nationality, an individual will be able to rely upon residence under domestic UK legislation as part of their five year qualifying period for permanent residence if a) they had leave to remain under the Immigration Rules and b) where their leave was in a category which would have fallen within the scope of Article 7 of the Free Movement Directive had it applied at the relevant time.

Consideration has therefore been given to your period of residence in the United Kingdom in light of the relevant caselaw, including the Court of Justice of the European Union ("the CJEU") judgments in *Lassal* (C-162/09), *Ziolkowski* (C-424/10) and *Tsakouridis* (C-145/09); and the Court of Appeal judgment in the case of *FV* [2012] EWCA Civ 11199.

6. In this context, "residence" means lawful residence within the community. It is not considered that time spent in prison constitutes residence for the purpose of the EEA Regulations (LG & CC [2009] UKAIT 00024 and *Carvalho* [2010] E WCA Civ 1436).

### Residence

7. You claim to have first arrived in the United Kingdom on 13 July 2007, as an EEA national you would not have been subject to immigration control. You first came to the attention of the authorities on 15 September 2007, when you were cautioned for having an article with blade in a public place. On 11 November 2007, police were called to Clapham Common, following an incident with a knife. No charges were brought, but you underwent a mental health assessment and you were admitted to Springfield Hospital and subsequently detained under Section 3 of the Mental Health Act 1983 (MHA). On 22 May 2009, you attacked a member staff at Springfield Hospital and on 26 May 2009, you were committed for trial to HMP Highdown, you were then transferred on 29 July 2009, to Broadmoor under section 48 of the Mental Health Act.

8. On 28 October 2009, you were convicted of causing grievous bodily harm, with intent to do grievous bodily harm and on 8 April 2010, you were sentenced to a Hospital Order under sections 37/41 of the MHA and transferred to Farmfield Hospital.

9. Following advice from your responsible clinician on that you were able to understand the deportation process. On 25 March 2013, a liability to deportation letter was sent for service. Your response was received on 4 April 2013.

10. On 18 April 2013, you absconded from Farmfield Hospital, while on unescorted leave and flew to the Netherlands.

11. On 1 July 2013 the Home Secretary agreed your exclusion from the UK.

### Residence - permanent right to reside

12. As you have stated that you arrived in the United Kingdom on 13 July 2007. On 11 November 2007, police were called to Clapham Common, following an incident with a knife. No charges were brought but you underwent a mental health assessment and you were admitted to Springfield Hospital under section 2 of the MHA. You were subsequently detained on a treatment order under section 3 of the MHA. You remained detained under the Mental Health Act and on 22 May 2009, whilst in hospital you attacked a member of staff. On 26 May, 2009, you were committed for trial to HMP Highdown and on 29 July 2009 you were transferred to Broadmoor under Section 48 of the MHA. On 28 October 2009, you were convicted of causing grievous bodily harm with intent to cause grievous bodily harm.

13. You had only been resident in the United Kingdom for 2 years and 3 months prior to your conviction and of that time only 4 months were spent in the community, as you were detained under the Mental Health Act in November 2007. There is no evidence that you have exercised treaty rights in the United Kingdom. Therefore you have not resided in accordance with the EEA regulations for a continuous period of 5 or 10 years continuous residence. In light of the information available it is not considered that that you have acquired the right of permanent residence in the United Kingdom.

14. Consequently, consideration has been given to whether your exclusion is warranted on grounds of public policy or public security.

## Assessment of Threat

15. Consideration has been given to the principles set out in Regulation 21(5). This states that a decision to exclude a person under the 2006 Regulations must be taken in accordance with the following principles:

- the decision must comply with the principle of proportionality,
- the decision must be based exclusively on the personal conduct of the person concerned,
- the personal conduct of the person concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society,
- matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision, and
- the person's previous criminal convictions do not in themselves justify the decision.

16. The circumstances of the offence are as follows. It is reported that on 22 May 2009, while detained at Springfield Hospital under section 3 of the MHA, whilst eating lunch, you started to shout and swear, you walked out of the dining room talking to yourself and you were asked by a dinner lady to tidy up your crockery. You then returned to the dining room and picked up a cup and a knife, which you then began waving about. Your anger was directed at a healthcare assistant and you picked up a chair and hit her three times whilst shouting and swearing. The healthcare assistant sustained swelling and bruising to her left cheek, neck and arm and required nine or ten sutures to repair her left ear lobe. When interviewed by police on 25 May 2009, you admitted the assault, but blamed others for what had happened and expressed no remorse about what you had done or concern about the victim of the assault.

17. The sentencing judge in your case made the following statements; *'This was a serious assault, it had very serious results for the lady concerned, and it did demonstrate, in my judgement, a dangerous tendency on your part towards members of the public, including strangers, and for that reason I am going to couple with the hospital order a restriction order which means that you will be detained indefinitely. Now, when I say that it means without limit of time. You will have the right to apply for a mental health review tribunal for discharge, do you understand?'* The judge went on to say *'So I am going to make an order restricting your detention indefinitely for the reason that I think the public needs protecting from you when you are in a psychotic state.'*

18. You have been convicted of a serious offence and the victim was described as having recovered from her physical injuries but had been emotionally traumatised as a result of the attack.

19. Your responsible clinician states in his report dated 5 September 2012 *'Mr Lomp presents with features of an enduring mental disorder consistent with a diagnosis of a schizoaffective disorder, characterised by grandiose delusions that he is a prophet and the founder of a new religion, delusions of persecution by the Dutch and the English mental health system, thought disorder, sexual disinhibition and limited insight. There is a significant affective component that includes irritability, hostility, excitability and aggressive behaviour. Mr Lomp's account of a religious experience at the age of 27 years is the principal evidence for the onset of his mental disorder that would have occurred early in his sentence for homicide. His subsequent extensive criminal record and behaviour in Holland suggests that he has been ill for many years and has remained largely untreated until his arrival in the UK.'*

*In the community Mr Lomp shows a disregard for social norms and has engaged in repetitive violent offending behaviour. His continuing poor insight and judgement fluctuating mental state presentation, negative attitude to psychiatric services and boundary pushing behaviour are in my opinion risk factors for the future disengagement with psychiatric aftercare and supervision that will put others at risk.*

20. Your responsible clinician in his report of 22 April 2013, advises *'I remain of the opinion that his mental disorders are of a nature and degree which warrant his continued detention in hospital for his own health, safety and the protection of others. In recent months he has deliberately broken rules around agreed care plan, instead acting independently according to his own wishes. His insight continues to be a problem and despite his careful thought out responses in interview situations regarding his need for treatment, his true feelings are expressed more openly in the everyday environment of the ward, that indicates he is unlikely to continue to take prescribed medication in the community and is likely to evade regular clinical supervision, for example by travelling abroad and avoiding appointments. Therefore there is a high risk of relapse and as a consequence is likely to resort to intimidation, aggression, the carrying of weapons and actual physical violence within a relatively short period of time. I would support this with information that he has regularly come into contact with the criminal justice system when he has been left untreated in the community in the past. As yet Mr Lomp has little or no understanding of this pattern of his behaviour or the consequences of his decision making that jeopardise the stability of his mental health. Further difficulties in providing aftercare and supervision are likely to arise as a consequence of Mr Lomp's history that indicates that whilst in the community he is highly mobile, resourceful and dangerous. I am also of the view that currently Mr Lomp is likely to represent a grave and immediate danger to members of the public in Holland should arrangements be made to deport him.'*

21. You have a number of previous convictions in the Netherlands. On 26 November 1993, at the Hague Court, you were convicted of blackmail, attempted murder, damage to property and assault on police, for which you were sentenced to 10 years imprisonment. On 25 January 2001, at Dordrecht Criminal Court you were convicted of robbery, having counterfeit currency note with intent and possessing prohibited weapons for which you were sentenced to 3 years and six months imprisonment. On 28 February 2007, at the Hague Police Court, you were convicted of possessing prohibited weapons, destroy or damage property and sentenced to 14 days imprisonment and a 2 years probation. On 8 January 2008, at the Hague Cantonal Judge, you were convicted of possessing prohibited weapons and sentenced to a fine of 120 Euros or 2 days in prison (crime committed on 30 December 2006).

22. As advised by your responsible clinician you have no insight into your mental health condition and he is of the opinion that you are unlikely to comply with medication and treatment, once you are living in the community. It is therefore considered that without addressing the issue you will continue to re-offend in the future. You appear to give no consideration for the consequences or effects of your actions upon your victims, and have expressed no remorse for your actions. The consequences for all those involved in, or touched by violent crime are enormous, the victim of your attack was described as having been emotionally traumatised as a result of the attack.

23. All the available evidence indicates that you have a propensity to re-offend and that you represent a genuine, present and sufficiently serious threat to the public to justify our exclusion on the grounds of public policy.

#### **Proportionality - EEA Regulations**

24. Regulation 21(5)(a) states that any decision to exclude "must comply with the principle of proportionality". Regulation 21(6) states that "Before taking a relevant decision on the grounds of public policy or public security in relation to a person 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 the person, the person's length of

residence in the United Kingdom, the person's social and cultural integration into the United Kingdom and the extent of the person's links with his country of origin".

25. You left Curacao in the Dutch Antilles for Holland at the age of 22. You have stated that you arrived in the United Kingdom on 13 July 2007. You were arrested in the UK on 11 November 2007, and although no charges were brought you were detained under section 2 of the Mental Health Act and you have remained detained in hospital or prison since that date. Whilst detained under the Mental Health Act, you attacked a member of staff and you were convicted on 28 October 2009. It is therefore considered that you had only been resident in the United Kingdom for 2 years and 3 months prior to your conviction. It is therefore considered that you have not acquired a right of permanent residence in the United Kingdom in accordance with EC regulations for a continuous period of 5 years.

26. You have advised that you do not have a wife or child in the United Kingdom and you have provided no evidence that any other family members are resident in the United Kingdom. You have not provided evidence of exercising treaty rights in the United Kingdom.

#### Conclusion - EEA Regulations

27. You have committed a serious criminal offence in the United Kingdom and, as explained above, the professional assessment is that there is a real risk that you may re-offend in the future. Account has been taken of the considerations outlined in EEA Regulation 21(6). Nevertheless, given the threat of serious harm that you pose to the public it is considered that your personal circumstances do not preclude your exclusion from the United Kingdom. It is considered that the decision to exclude you is proportionate and in accordance with the principles of Regulation 21(5).

28. The Secretary of State has therefore decided under Regulation 19(1B) of the Immigration (European Economic Area) Regulations 2006 (as amended) to make this exclusion order against you, prohibiting you from entering the United Kingdom while the order is in force.

#### EUROPEAN CONVENTION ON HUMAN RIGHTS

##### Introduction - Article 8

29. In addition to the requirements of the EEA Regulations, consideration has been given to your rights under the European Convention on Human Rights ('the ECHR'). Specific consideration has been given to the UK's obligations under Article 8 of the ECHR.

30. It is a well-established principle of law that every state has the right to control the entry of non-nationals into its territory. Article 8 does not give a person the automatic right to choose to pursue his or her family or private life in the United Kingdom.

31. The provisions of paragraphs 396 to 400 of the Immigration Rules regarding Article 8 of the ECHR are not applicable in your case. Paragraph 5 of the Immigration Rules explicitly states that the Rules "*do not apply to those persons who are entitled to enter or remain in the United Kingdom by virtue of the provisions of the 2006 EEA Regulations*". Consideration has therefore been made in light of relevant caselaw.

In accordance with *Razgar v SSHD* [2004] UKHL 27, consideration has been given to:

- whether you have established a family or private life in the United Kingdom;
- whether the decision to remove you would result in interference with your right to family or private life;
- whether, if there is interference with private or family life, it is in accordance with the law;

- whether the interference is in pursuit of one of the permissible aims set out under Article 8 (2) and;
- Whether the interference is proportionate to the permissible aim.

### Consideration – Article 8

32. You are 46 years of age. You do not have a wife or child living in the United Kingdom, and you have given no details of any other family members in the UK.

33. For the reasons set out above it is not accepted that you have established family life in the United Kingdom and therefore your exclusion from the United Kingdom will not amount to a breach to Article 8 of the ECHR.

34. While it is not accepted that you have established a family life in the United Kingdom, for the same reasons it is considered that even if you did have a family life in the United Kingdom, the decision to exclude you would similarly be in accordance with the relevant legislation and the Home Office published policies.

### Article 8 Mental Health Consideration

35. Consideration has been given to the question of whether your deportation would breach the UK's obligations under Article 3 or Article 8 of the ECHR in view of your mental health situation

36. To engage the UK's obligations under Article 8(1) you would have to show that removal would interfere with your right to respect for your private life and that this interference was disproportionate under Article 8(2) of the ECHR.<sup>43</sup> It is accepted that Article 8 may be engaged in cases where removal will adversely affect a person's mental health. However, the House of Lords has indicated that the threshold for establishing a breach of Article 8 in mental health cases is very high. As Lord Bingham said in *Razgar*

*"... legitimate immigration control will almost certainly mean that derogation from the rights will be proper and not disproportionate" and (paragraph 26), "decisions taken pursuant to the lawful operation of immigration control will be proportionate in all save a small minority of exceptional cases". (Paragraph 20)*

37. Information provided by the World Health Organisation states that mental health care is a part of primary healthcare system and community care facilities are available for those with mental disorders. Therapeutic drugs are available. You have received treatment in the Netherlands. Whilst in prison in the Netherlands, you were referred to the forensic psychiatric service, but your refusal to co-operate meant that assessments didn't take place. You were admitted to Parnassia Psycho-Medical Center on 8 May 2006, due to aggression thought to be due to suspected psychosis. However, 10 days later you escaped from the unit by forcing a window.

38. It is therefore considered that there are appropriate psychiatric facilities available to you in the Netherlands. It is not accepted that, the difference in treatment and support available to you in the United Kingdom, when compared to that which is available in the Netherlands, is sufficiently serious to engage Article 8(1) of the ECHR. Exclusion cannot be resisted merely on the ground that medical treatment or facilities are better or more accessible in the UK than in the Netherlands. Additionally, you are an EU national. It is open to you to travel to other EU member states to receive treatment. Therefore there is no breach and nothing to suggest that Article 8 would be engaged on the basis of your mental health issues.

39. It is accepted that you may have developed a degree of private life while you have been living in the United Kingdom, with mental health professionals and friends. However the

view is taken that that you can maintain friendships and acquaintances by modern means of communication from the Netherlands.

40. While it is accepted that you have established a private life in the United Kingdom, given the threat you pose to the public, which is explained above, it is considered the interference in you private life caused by the decision to exclude you is in accordance with the relevant legislation and the Home Office published policies in pursuit of the permissible aim of the prevention of disorder and crime.

41. Given the threat that you pose to the public it is considered that your personal circumstances do not preclude your exclusion from the United Kingdom. The decision to exclude you from the United Kingdom complies with the principal of proportionality.

42. It is therefore concluded that your exclusion is in accordance with Regulation 21 and with Article 8 of the European Convention on Human Rights. On the information available it is not believed that your exclusion would breach our obligations under any Article of the Convention.

43. In light of the evidence available, it is therefore concluded that your deportation is justified under the 2006 Regulations and under the European Convention on Human Rights.

#### **Conclusion - Article 8**

44. For all the reasons given above it is also concluded that your exclusion is in accordance with Article 8 of the European Convention on Human Rights and, on the information available, it is not believed that your exclusion would breach our obligations under any other Article in the Convention.

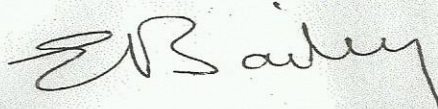
#### **Appeal Rights**

45. In the light of all the evidence available, it is concluded that your exclusion is justified under the 2006 Regulations and under the European Convention on Human Rights.

46. You have a right of appeal against this decision under Regulation 26 of the 2006 Regulations. Information on how to appeal and the time limits for appealing are contained in the attached notice.

47. If you have not yet taken advice on your position, you are strongly advised to do so now.

Yours sincerely,



Criminal Casework  
Immigration Enforcement  
Home Office  
*acting on behalf of the Secretary of State*

Encs: Notice of decision ICD 4079  
Appeal Form ICD 2163