



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00589/2013

THE IMMIGRATION ACTS

Heard at Field House
On 23 January 2014

Determination Promulgated
On 14 February 2014

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MR GEORGE CHELOIU

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms V Lovejoy, Counsel instructed by Sam Solicitors
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Romania, born on 24 July 1972.

2. He seeks to appeal against the decision by the respondent of 15 March 2013 to make a deportation order against him. The hearing of that appeal came before First-tier Tribunal Judge Walters and Mrs Holt (Non-legal Member) on 3 July 2013. The appellant's appeal in respect of the immigration decision and that in respect of Article 8 of the ECHR was dismissed.
3. Grounds of appeal were lodged against that decision by the appellant himself, from prison. Permission to appeal was granted on 5 August 2013.
4. The matter first came before me in pursuance of that grant on 30 September 2013.
5. There were essentially three grounds that were advanced before me.
6. The first was on the basis that the Tribunal had failed to engage properly with the deportation process as affecting EEA nationals and to make findings upon a proper basis.
7. The second concern was that there was an inadequate assessment of Article 8 of the ECHR.
8. The third ground was that the appellant was the subject of extradition proceedings which, it is argued, effectively should act as a stay to the deportation proceedings.
9. I considered each of those matters in turn and concluded that the Tribunal had properly engaged with the deportation process as affecting EEA nationals. I could see no reason why deportation proceedings should be stayed in the circumstances.
10. The reasons for my finding are set out in a decision dated 6 October 2013, which is annexed to this decision.
11. I did, however, uphold the concern that there was an inadequate consideration of Article 8 of the ECHR.
12. Thus I indicated that there would be a re-hearing before the Upper Tribunal, limited to the issue of Article 8 in the anticipation that Miss Radu would give evidence.
13. Unfortunately, hearings which were listed had to be adjourned for one reason or another. In particular, on one occasion, the appellant was not produced from custody through no fault of his own and on another there was an absence of legal representation. Thus it was that the matter finally came before me on 23 January 2014. Ms Lovejoy, who represents the appellant, also represented him before me in September 2013.
14. Ms Lovejoy invited my attention to her skeleton argument and to two bundles of documentation. The first bundle was that which was before the First-tier Tribunal

and was a subsequent bundle produced in pursuance of the directions that I have issued.

15. At the outset of the hearing Ms Lovejoy submitted that, given my concerns as to the absence of reasoning in relation to Article 8 , such concerns should also impact upon the immigration decision in that a decision taken in accordance with Rule 21 of the Immigration (European Economic Area) Regulations 2006 must comply with the principle of proportionality.
16. I indicated that it was open to her to make what submissions she felt appropriate in all the circumstances without necessarily being confined to any particular aspect of the case.
17. The appellant relied upon his various statements and sought to give further brief oral evidence.
18. In his statement of 20 August 2013 the appellant contends that insufficient consideration was given to his social and cultural integration into the United Kingdom and his lack of links with Romania. He arrived in the United Kingdom from Romania in February 1999 as a tourist and to attend a course. He did not attend the course but began working without leave to do so as a waiter in a motorway restaurant. He worked in that restaurant for a year. Subsequently he moved to London where he began work as a barman in an Italian restaurant. That lasted for two years. In 2001 he met his partner, Alexandra Radu, and they lived together. He worked for a time as a marketing adviser for a company in East London specialising in direct sales. He claimed to have been successful in that enterprise working for the company in December 2005. In all this time he was living and working illegally.
19. He returned briefly to Romania in order to obtain a business visa, returning to the United Kingdom after failing to set up in Romania a small business. Thereafter he did not work but rather stayed at home to look after his partner who was suffering from MS. As a couple they depended upon his previous savings and upon her wages. In 2010 he finally obtained his full work permit and insurance number but was unable to get a job. Thus he involved himself in the criminal enterprise which is the subject matter of the deportation proceedings. Subsequent to his imprisonment he has sought to improve his personal conduct and circumstances. He has completed a number of courses provided by the prison and has achieved new skills. He also works within a scheme in the prison to help other prisoners improve their reading and writing. He apologises for his conduct and indicates that he wishes to make amends in order to be with his partner. Multiple sclerosis is an illness which is progressive in its disability, therefore the appellant wishes to be with his partner and support her. If he were to be sent to Romania he would be homeless and jobless as he has no family there.
20. In his more recent statement he repeats his regret for his offences and his commitment to Miss Radu.

21. In his oral evidence the appellant stressed the adverse progressive nature of multiple sclerosis, stressing his wish to be with, and to support his partner in her condition. Of his extradition to Slovenia he indicated that although he denies the offences for which he convicted he will nevertheless complete the appropriate period of custody arising from the sentence of eighteen months' imprisonment which had been imposed upon him by the authorities in that country.
22. Miss Radu also gave evidence, relying as she did upon her witness statements.
23. In her statement of 26 September 2013 she indicates that she has been living in the United Kingdom since September 2001 and was diagnosed with multiple sclerosis in 2009.
24. She speaks of the appellant as her true soul mate and her sole support, speaking as to the great help that he gave her with regard to her day to day activities. She says that her condition is getting worse although she takes medication to slow down its progress. She speaks of the fact that the condition was diagnosed in 2009 after she experienced the second major incident consisting of a loss of feeling in her legs. She had difficulty in walking for six months. The first incident occurred in 2008 when she experienced blurred vision for two months.
25. She indicated in the statement that it was extremely difficult for her to look after herself (back from work very tired and unwell). She speaks of the support which the appellant gave her and of the immense pain and emotional distress which she had suffered since his imprisonment.
26. Miss Radu gave evidence. She entered the United Kingdom in 2001 and established herself on a self-employed basis with employment involving cleaning. She commenced working for her present employers some six years ago. Initially she had a desk job, manning the help desk, but then obtained an appointment as a facilities co-ordinator which entails making contact with the contractors, cleaners and staff within the building. That job involves partly desk work and partly walking through the building to make contact with the various individuals. She finds walking difficult but manages. Occasionally her condition flares up and then she finds it difficult to walk or get out of bed. Sometimes she experiences the side effects of the medication or illness as being shivering, headaches. At first she did not tell her employers about her condition but they now know about it and are understanding of it.
27. She had spoken of the difficulties that she experienced in the past with loss of vision and walking. She takes injections three times a week to slow down the progress of the disease but it is progressive and it is inevitable that it will get worse. It is her understanding that matters would deteriorate significantly after ten years of the disease. Thus she has some four years further to go before it really begins to deteriorate.

28. She lives by herself in one room which she rents. Her life essentially revolves around working and home and such takes up all her energy. She also finds housework difficult and misses the help which the appellant would give her in terms of cooking, cleaning and transportation.
29. She indicated that she has purchased on the internet a course of study for him to do were he to be released. All she wishes is for him to return to her to lend support to her in her illness.
30. There are in the bundle several printouts from the internet. Miss Radu indicates that although she holds dual nationality, having become a citizen of the United Kingdom in 2010 and still retaining her Romanian passport, it would be difficult for her to return to Romania. She has no family members other than her mother who is also on medication, living with a heart condition. Her mother does not earn very much money to support her. The treatment which would be available to her in Romania would be less good than it is in the United Kingdom and may involve a substantial wait to access.
31. Finally, Mr Alex Iliescu gave evidence and produced a witness statement of 24 June 2013. He is a close friend of the appellant's and a British resident. He speaks of the appellant as a kind and good natured person and makes a similar comment for Miss Alexandra Radu saying that they are a loving couple.
32. He keeps in contact both with the appellant and with Miss Radu.
33. He works with his future father-in-law in a construction company which is undertaking refurbishment work in London. He has no doubt that a job as a labourer could be found for the appellant. He speaks to Miss Radu on numerous occasions to ensure that she is well.
34. The parties proceeded to make their submissions to me.
35. Mr Tufan, on behalf of the respondent, invited me to find that the appellant still constituted a risk to society such that it would be proper for him to be removed from the jurisdiction.
36. There is nothing, he submits, that would prevent Miss Radu from returning to Romania to be with him if that were her wish. As a British citizen she of course is entitled to remain in the United Kingdom but it was not unreasonable in the circumstances for her to return.
37. Miss Lovejoy invited my attention to her skeleton argument. She submitted that on a proper reading of the court documentation the risk of re-offending was low. She invited me to take particular note not only of the remorse shown by the appellant but of his actions in undertaking further study or giving assistance in prison as

illustrating that he had reformed his attitude and would constitute no risk to the public.

38. She invited my attention to the case of Essa and to the fact of rehabilitation where best that would be undertaken as being a relevant matter.
39. She invited me to find that the condition of Miss Radu was such that it would be in breach of her fundamental human rights as well as the appellant's human rights not to allow him to remain to support her. She invited me to find, therefore, that the appellant did not reach the threshold as someone who presented a current and sufficiently serious risk to the public, in the alternative that it was still disproportionate to remove him from the jurisdiction. That would only punish Miss Radu who as blameless in all these matters.
40. I remind myself that the framework for the immigration decision is that set out in paragraphs 19 and 21 of the Immigration (European Economic Area) Regulations 2006.
41. It is common ground that the appellant is not someone who has gained a permanent right of residence under Regulation 15.
42. It has not been argued before me that the appellant gained any such rights living with Miss Radu in a durable relationship were she exercising her treaty rights. In any event, since 2010, she was a British citizen exercising her citizenship rights. The immigration history of the appellant is that he has lived largely illegally in the United Kingdom practising deception to the extent that he has used aliases in the course of his work.
43. Essentially, therefore, it must be shown that his personal conduct is such that he represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.
44. Upon any reading of the matter the offence committed by the appellant was a serious one. The nature of the matter is set out in the sentencing remarks of Mr Recorder Levitt QC of 25 November 2011. It was a professional fraud, perpetrated on the banks, and involving the fitting to the fascia of cash points ,a false fascia, thereby facilitating the copying of cards that were in turn used to obtain money. The appellant himself travelled widely in pursuit of these objects from May to August 2011 and had paraphernalia in his possession. Although not the organiser of the gang he was a willing participant. The aggravating features, as highlighted by the Judge, included the length of time over which he was involved; the number of cards in his possession and the number of compromised bank details which were on his laptop. He received a sentence of three years and four months' imprisonment on each count concurrent.

45. Reference is made to the NOMS Report found at Annex E to the respondent's bundle of documents. It is not entirely clear when it was prepared other than a request dated 18 January 2012. The level of risk of serious harm to the public in that report is stated as being low as is the likelihood of re-conviction. Significantly however, in the heading of that particular report, it was indicated in answer to the question "does the prisoner have previous convictions in other countries?", answer: "not known".
46. It is now known and accepted that the appellant has been convicted in Slovenia of an offence, the particulars of which have not been notified to me or relied upon by either side. It is the offence which is the subject matter of the extradition proceedings.
47. Mr Tufan relies upon the further NOMS Report with a request date 18/1/2010, 16/8/12 and 7/9/12 which speaks of there being no OASys completed. There is a comment within that report as follows:-

"Although Mr Cheloiu was assessed as a low risk of harm, I am inclined to see him as presenting a medium risk of re-conviction due to the fact that he has two convictions in 2009 before the current matter in 2011. It would appear as though there is an emerging pattern of offending."
48. Ms Lovejoy invites me to find that it is unclear from the face of the document when it was prepared and to what it refers. In any event I note that no consideration has been given of any offence in other countries as the relevant section is marked "not known".
49. It would seem that on 18 November 2009, at the Southampton Magistrates' Court, the applicant was convicted of failing to surrender to custody at the appointed time. Indeed it is suggested that he had absconded from the authorities in order to evade the consequences of his action. That he did so does not seem to be denied by the appellant. On 27 November 2009, at the Hendon Magistrates' Court, he was convicted on two counts of driving a motor vehicle with excess alcohol, two counts of using a vehicle while insured and failing to surrender to bail.
50. In addition to his domestic offending there is the matter for which the extradition order has been made and is to be implemented.
51. I remind myself of Rule 21(5)(e) that a person's previous criminal convictions do not in themselves justify the decision and it must be based exclusively on the personal conduct of the person concerned.
52. In that connection is the wider context of illegal residence and the adoption of aliases in order to work when not so permitted. Absconding from custody is relevant as to his response to, and respect for civil authority.

53. It is significant to note that his offending, which was widespread and very serious, arose because of his need of money, given his inability to find work. In that connection I note what Mr Iliescu is offering, namely some form of labouring work with his prospective father-in-law's business. Whether that is some job that is suitable for the appellant or some job that he would wish to continue is perhaps a matter of speculation. It was the hope of Miss Radu, as expressed to me, that if he could find work then she could work part-time which would be beneficial for her. Notwithstanding this expression of confidence in his obtaining work, the reality is that the appellant failed to obtain work even having a business visa and before this serious and dishonest fraud. I assess that the chances of the appellant finding work in the United Kingdom, let alone keeping it, as remote. Certainly labouring is not what the appellant has done in the past. Indeed, if the condition of Miss Radu were to worsen so that she may not be able to work then the financial difficulties would be exacerbated, leading as I so find, to the temptation arising to which he gave into in the past. There is little to indicate that his connection with the former criminal colleagues has been broken, other than my his detention.
54. In fairness to the appellant I note what he says in his statements about being reformed in his behaviour and motivated to keep out of trouble because of the needs of Miss Radu. It is to be noted, however, that her most distressing incidence of ill-health on her own account occurred in 2008 and 2009 and it was entirely obvious to both she and the appellant that she was suffering from a very serious and disabling condition. Notwithstanding those matters and the clear need of her for his support, he nevertheless involved himself in a widespread and serious course of dishonesty. I do not find therefore that the health of Miss Radu is a feature which can reliably be said to be weighed in his favour in approaching the issue of risk or sufficiently serious threat to the public. As I indicated I know nothing of the offence for which he has been convicted in Slovenia but it would be unrealistic of me not to take note of that conviction in its general terms in considering the overall personal profile and behaviour of the appellant.
55. The appellant has denied committing the offence for which he faces extradition but it is also to be noted that in the NOMS Report the offender manager also stated that the appellant had denied his involvement in the organised crime network, stating that he committed the offence under pressure and was only the caretaker of the equipment when it is clear that he was playing a full and willing part in an enterprise of some sophistication.
56. The appellant received various fines on relatively minor matters but those offences had escalated in their gravity. He had been undeterred by previous convictions or sentences and continued to offend.
57. The Judge, in his sentencing remarks, observed the appellant to be part of a team of people who had a lot of skill and expertise. The equipment was of a significant and sophisticated nature. It was clearly a professional gang, it was carefully planned and

on a substantial scale. The Judge found the appellant to be an important cog in the wheel.

58. In completing one of the NOMS assessments the offender manager found the applicant posed immediate risk of re-offending stating there was no evidence that the appellant had disassociated himself from the criminals. On the contrary it was suggested that the appellant still owed money to the gang. The appellant is alleged to have told the offender manager that he committed the offence in order to fund his partner's medical treatment as she remained unwell. These matters led the respondent in the refusal letter to conclude that the appellant had a propensity to re-offend and that he represented a genuine, present and sufficiently serious threat to the public to justify his deportation.
59. As Miss Radu indicated to me she finds she is just able to manage running her accommodation and food with the job that she takes. There are no family members in the United Kingdom nor people that she will spend much time with other than those in work. Her work occupies her attention. As her illness progresses it is less easy for her to work and the scenario of needing money is one that will arise in the future and one indeed which is plainly a concern in the present. The illness of Miss Radu did not deter the appellant from offending, indeed on one reading of the report it was a reason for needing money and to offend.
60. In assessing the risk it is right that I bear in mind the various courses which the appellant has completed in prison and the new skills which he has found. Indeed, at the hearing, he produced a note from the B Wing staff saying that he is employed as a support orderly which is a responsible and privileged position and he carries out his duties to a high standard. He has good behaviour and gets on with staff and inmates alike.
61. I bear those matters in mind in his favour.
62. Looking at the personal conduct of the appellant over the years it is clear that he is somebody who has sought his own self-interest to the detriment of the public, evading custody and by evading the application of any immigration law. In fairness to him he sought to regulate his position in 2010 when he applied for leave to marry Miss Radu at that time. Nevertheless, that brief attempt at legality was short-lived in the light of the pattern of his offending.
63. Looking at the matter overall and bearing in mind the assessment of low risk that is formally made but, without knowledge of the matters in Slovenia, I conclude that the appellant's presence in the United Kingdom is one which represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. In coming to that conclusion I have borne in mind the personal conduct of the appellant and consideration of age, health, family, economic situation and length of residence as required under Regulation 21(5) and 21(6).

64. I also have to consider the principle of proportionality and in that connection Ms Lovejoy invites my attention to the decision of **Essa (EEA; rehabilitation/integration) [2013] UKUT 00316 (IAC)**. She submits that it is an important factor to be borne in mind in the case of an EEA national to decide in which country his chances of rehabilitation would be better. She invites me to find that he has little contact with Romania, indeed his only family contact is that with Miss Radu in the United Kingdom. She invites me to consider that his best chances of rehabilitation are in the United Kingdom and to some extent that argument has merit, particularly given the infrastructure of supervision that will apply to the appellant once released from custody. His behaviour will be monitored and controlled although that is perhaps not the same necessarily as rehabilitation. As I have indicated however, previously his association with Miss Radu did not prevent his offending before and, without more, I do not find that it necessarily would be a motivation to his rehabilitation.
65. I note what is said in **Essa** that is relevant to the issue of proportionality, namely at bullet point 3:-
- “3. For those who at the time of determination are or remain a present threat to public policy where the factors relevant to integration suggest that there are reasonable prospects of rehabilitation, those prospects can be a substantial relevant factor in the proportionality balance as to whether deportation is justified. A claimant cannot constitute a present threat when rehabilitated and it is well advanced in rehabilitation in the host state where there is a substantial degree of integration, it may well be disproportionate to proceed to deportation.
 4. At the other end of the scale, if there are no reasonable prospects of rehabilitation, the claimant is a present threat and is likely to remain so for the indefinite future, it cannot be seen how the prospects of rehabilitation could constitute a significant factor in the balance. Thus, recidivist offenders, career criminals, adult offenders who have failed to engage with treatment programmes, claimants with propensity to commit sexual or violent offences and the like may well fall into this category.”
66. In **Essa** the Tribunal considered that the test was genuine integration rather than the precise number of years of residence. It noted that the court’s reference to genuine integration must be directed at qualified persons and their family members who have resided in the host state as such for five years or as people who have not yet become qualified persons can always be removed for non-exercise of free movement rights irrespective of public good grounds to curtail free movement rights. If their presence during this time makes them a present threat to public policy it would be inconsistent with the purposes of the Directive to weigh in the balance against deportation their future prospects of rehabilitation.

67. In this case it is not suggested that the appellant has permanent residence and whether or not it could be said that he is “genuinely integrated” into a country, he has exercised deception within that country and has offended and absconded .
68. Nevertheless, in fairness to the appellant, I do bear in mind the issue of rehabilitation but conclude in light of his personal conduct over a number of years, that rehabilitation is remote wherever it may be sought to be conducted. I find that supervision is not the same thing as rehabilitation.
69. In conducting the examination of proportionality I bear in mind very much the interests of Miss Radu. I found her to be an entirely honest and open witness. I have no doubt of her affection for the appellant and indeed his affection for her. I can readily appreciate that his absence makes day to day living for Miss Radu more difficult. I have no hesitation in finding that when they are together there is a genuine family life to be enjoyed.
70. That having been said, however, as a British citizen she will continue to enjoy the benefits of the national health and the supply of her medication and, if matters get worse, no doubt the provision of caring or further assistance. I do not find therefore that it is essential for the appellant to remain as her carer. It is however to be recognised that there is a particularly strong emotional dependency upon him although, once again, he has been in custody since August 2011 and Miss Radu, on her own account, has coped with that absence by working full-time and supporting herself. As a British citizen she is entitled of course to remain in the United Kingdom irrespective of the outcome of these deportation proceedings against her partner.
71. It is her case and indeed his that she could not return to be with him in Romania, should she so decide. It is suggested that it would be unreasonable and unduly harsh for her to do so, given particularly the lack of employment and the difficulty with her medication. I do not detect from her evidence or from that of the appellant that any specific enquiries have been made of the authorities or medical groups in Romania on that precise issue, rather reliance is placed upon a number of articles from the internet:. One of the articles “Informatia Medicala” speaks of the fact that only 20% of MS patients receiving treatment in Romania. It says that multiple sclerosis patients are forced to wait over twelve months to get treatment compensated by the state. It is estimated that in Romania there are between 8,000 and 10,000 multiple sclerosis sufferers. Access to treatment and long waiting lists pose a problem. The article however does mention that the Multiple Sclerosis Society of Romania is a non-governmental federation with fifteen years’ experience with member organisations in various towns within Romania, within it some 2,000 people. One of the aims of the society is to improve the quality of life of people affected by the disease. Other articles specify the various problems that will arise in time including muscle spasms, pain, mobility problems, fatigue, mental health, sexuality and bladder problems, to mention a few. Were Miss Radu to return to Romania she would of course have the support of the appellant if he were returned there.

72. Although I recognise that conditions may be more difficult in Romania I do not find, on the basis of the limited information placed before me, that it fully or accurately discloses the reality of the situation for MS sufferers.
73. It is also to be noted in connection with the waiting time that Miss Radu receives a three month supply of her medication in advance because she is a trusted patient and no doubt supplies could be given as to assist in that regard.
74. Looking at the Immigration Rules themselves and particularly EX1 I, do not find there to be insurmountable obstacles to family life being continued in Romania. Even taking the lesser test set out in Article 8, I do not find that it is unreasonable or unduly harsh to expect Miss Radu to return. She has some private life in the United Kingdom but that is very limited, confined largely to her work and her work colleagues. In Romania she has her mother she would be able to continue her family life with the appellant there. My attention was directed to the case of **Valentin Batista [2010] EWCA Civ 896** and to paragraph 27 thereof. A passage from the judgment of Lord Justice Carnwath which reads as follows:-

“I would add a further possible consideration, although it was not an aspect explored in any detail before us. Even in respect of those deemed sufficiently dangerous to justify deportation under the EEA rules, commonsense would suggest a degree of shared interest between the EEA countries in helping progress towards a better form of life. The prospects offered by the relationship with Miss Deane in this country may have been fragile, as the tribunal thought, but in Portugal they would be practically non-existent. Although he has siblings in that country, there seems to have been no evidence that they would be able or willing to offer the support needed to prevent what the Tribunal saw as his likely drift back to crime. There may be room for argument as to the relevance of such points under the Directive, but as at present advised I see no reason in principle why they may not be taken into account in the overall balance of proportionality. It will be a matter for Tribunal to consider whether they have any materiality in the present case.”

75. An obvious distinction to be made is of course that Miss Deane was a British citizen with no links to Portugal whereas Miss Radu is also a Romanian citizen who has her mother in the country.
76. It is perhaps the rehabilitation point in a slightly different direction. The weakness of that argument is that despite the appellant’s long residence in the United Kingdom and his relationship with Miss Radu he has nevertheless committed a number of offences, the latter being an extremely serious one over an appreciable period of time. His immigration history, as I have indicated is not one which inspires confidence of a change in attitude. Indeed, if it be the case if there be any truth in the suggestion made by the Practice Manager in the NOMS Report that the appellant remains indebted to the gang or indeed still in contact with them the chances of his re-offending are considerable whether that be in the United Kingdom or elsewhere.

77. This is a serious offence and one which I find constitutes a sufficiently serious threat to the public. I bear in mind the case of **SS (Nigeria) [2013] EWCA Civ 550**. Essentially the thrust of that case is more towards automatic deportation rather than that of an EEA national and the deterrent aspect is not one which is a principle reflected in Regulation 21. However it is a case which sets in clear context the way in which the interests of the public should be considered and the importance to be attached to that forms the sort of behaviour which might constitute a sufficiently serious threat involving the fundamental interests of society.
78. I also pay regard to the new Rules dealing with deportation. Article 8 is set out in paragraphs 398 and 399 of the Immigration Rules.
79. It is not argued before me that the appellant meets the requirements of the Rule. The Rule provides essentially it would only be in exceptional circumstances that the public interest in deportation would be outweighed by other factors. That being said I have in mind the caveat that this case involves a EEA national.
80. I consider the case of **MF (Nigeria) [2013] EWCA Civ 1192** which sets out generally the relationship as between the Immigration Rules and Article 8. I note in particular the Secretary of State's document entitled "Criminality Guidance for Article ECHR Cases" as set out at paragraph 14 of that judgment:-
- "In determining whether a case is exceptional, decision-makers must consider all relevant factors that weigh in favour and against deportation.
- 'Exceptional' does not mean 'unusual' or 'unique'. Decision makers should be mindful that whilst all cases are to an extent unique, those unique factors do not generally render them exceptional. For these purposes, exceptional cases should be numerically rare. Furthermore, a case is not exceptional just because the exceptions to deportation in Rule 399 or Rule 399A have been missed by a small margin. Instead, 'exceptional' means circumstances in which deportation would result in unjustifiably harsh consequences for the individual or their family such that deportation would not be proportionate. That is likely to be the case only very rarely."
81. What Ms Lovejoy is submitting is that the health of Miss Radu is such a case.
82. As the court in **MF** made clear, "the new Rules do not restore the exceptionality test, they contemplate a weighing of the public interest in deportation against "other factors". That must of course include as required by Regulation 21 a current genuine, present and sufficiently serious threat. Clearly, any repetition of criminality, let alone that which was the subject of the offending must constitute a matter of very real concern ,leaving aside any suggestion of deterrent or residual disapproval.

83. The appellant has expressed concern that a deportation order would place a barrier upon his return for a number of years in which time the physical condition of his partner may well deteriorate. His presence in Romania does not however preclude his taking care of her in that country.
84. Balancing such matters as I do, I find that it is not disproportionate to make the deportation order nor do I find that it is so undermining of the interests of Miss Radu in particular that such order should not be made. Notwithstanding the medical condition of Miss Radu I do not find that it comes within one of the relatively rare categories that should succeed either within or outside the Immigration Rules or the Regulations. In saying that I take into account all matters that have been raised including those medical documents and reports.
85. I find that in making the decision of 15 March the respondent has taken into account all relevant matters as required in Regulation 21 in all the circumstances it would not be disproportionate to remove the appellant nor in breach of any party's fundamental human rights.
86. The appeal in respect of the Immigration Rules and deportation decision is dismissed. That in respect of Article 8 is also dismissed.

Signed

Date

Upper Tribunal Judge King TD