



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DA/00099/2017

**THE IMMIGRATION ACTS**

Heard at: Manchester  
On 27 September 2017

Decision and Reasons Promulgated  
On 11 October 2017

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

DANIEL IONEL ANCUTA  
(NO ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Reyaz, Rasools Law

For the Respondent: Mr Mills, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Romania born on the 12<sup>th</sup> November 1995. He appeals with permission the decision of the First-tier Tribunal (Judge Malik) to dismiss his appeal against the Respondent's decision to deport him in accordance with the terms of the Immigration (European Economic Area) Regulations 2006.
2. The reason for the decision to deport was that on the 29<sup>th</sup> January 2016 Mr Ancuta was convicted at Preston Crown Court of the offences of Affray and Assault and sentenced to one year in prison. It was his fourth offence since August 2014. The Respondent considered this offence serious enough to

warrant expulsion, finding that the Appellant's removal was justified on grounds of public policy and security in accordance with Regulation 21. The Respondent premised her conclusions on her finding that the Appellant had not demonstrated that he attracted any enhanced level of protection against expulsion, for instance by demonstrating that he had established a permanent right of residence in the UK under Regulation 15.

3. When the matter came before the First-tier Tribunal the first question that it was asked to determine was whether the Appellant had in fact resided in this country for a continuous period of five years in accordance with the Regulations. It determined that matter in his favour [at paragraph 22] and there has been no challenge to that finding.
4. The next question that the Tribunal was required to address was whether the Respondent was correct to have deported the Appellant. The relevant legal framework for that enquiry was Regulation 21 of the 2006 Regs. This provides:

21. – (1) In this regulation a “relevant decision” means an EEA decision taken on the grounds of public policy, public security or public health.

(2) A relevant decision may not be taken to serve economic ends.

(3) A relevant decision may not be taken in respect of a person with a permanent right of residence under regulation 15 except on serious grounds of public policy or public security.

(4) A relevant decision may not be taken except on imperative grounds of public security in respect of an EEA national who –

(a) has resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision; or

(b) is under the age of 18, unless the relevant decision is necessary in his best interests, as provided for in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989(1).

(5) Where a relevant decision is taken on grounds of public policy or public security it shall, in addition to complying with the preceding paragraphs of this regulation, 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 concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society;

(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.

(6) 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.

(7) In the case of a relevant decision taken on grounds of public health –

(a) a disease that does not have epidemic potential as defined by the relevant instruments of the World Health Organisation<sup>(2)</sup> or is not a disease to which section 38 of the Public Health (Control of Disease) Act 1984<sup>(3)</sup> applies (detention in hospital of a person with a notifiable disease) shall not constitute grounds for the decision; and

(b) if the person concerned is in the United Kingdom, diseases occurring after the three month period beginning on the date on which he arrived in the United Kingdom shall not constitute grounds for the decision.

5. It will be observed that Regulation 21(3) imports a higher level of protection for those who can establish that they have a permanent right of residence in the UK. In those cases the Respondent is required to demonstrate that there are "*serious grounds*" of public policy/security, not simply "grounds" as in subsection (5). That then, was the test to be applied here, given the Tribunal's findings on that matter.
6. The Appellant's point in this appeal was that it is not clear from this determination that this was the test that the Tribunal did in fact apply. The proportionality of the decision is considered in paragraph 30. The Tribunal concludes that the decision of the Respondent was justified "with reference to Regulation 21(5) and (6)". No reference is made to Reg 21(3) or to the "*serious grounds*" test therein.
7. On the 14<sup>th</sup> September 2017 the Home Office Specialist Appeals Team in London filed a Rule 24 response in which the Secretary of State for the Home Department conceded that the error of law had been established. The Tribunal is therein invited to re-make the decision in the appeal.
8. Having got this far, Mr Reyaz invited me to simply allow the appeal. He did so for this reason. At the hearing, he stated, the Home Office Presenting Officer

had expressly conceded that the expulsion could not be justified if the Appellant had a permanent right of residence, because the offence was not serious enough to meet the threshold required by Regulation 21(3). This concession is recorded at paragraph 29:

“The respondent’s representative acknowledged that if the appellant had acquired a permanent right of residence, that the offending had to be more serious to justify exclusion and he left this for me to decide...”

9. Read in the context of the decision overall, I took this to mean that the HOPO accepted that ‘serious grounds’ could not be demonstrated, and that he was leaving the question of permanent residence for the judge to decide. That was certainly the reading favoured by Mr Reyaz, and it reflected his understanding of the submissions made at a hearing where he was present. For the Respondent Mr Mills very fairly agreed that the HOPO’s own minute was consistent with this:

“Pressed by the IJ, I conceded that if the appellant had acquired the right to permanent residence, his offending – serious as it was – was unlikely to be of sufficient gravity to justify expulsion”

The note went on to accurately predict the finding of the Tribunal: “the IJ will likely find that the appellant has acquired the right to permanent residence, bearing in mind our concession that he arrived in 2009”.

10. Having had regard to these three sources, I find it beyond doubt that the HOPO did make that concession. The parties before me agree that in those circumstances I could do no other than find that the decision of the First-tier Tribunal is set aside by consent, and to re-make the decision in the appeal by allowing it.

### **Decisions**

11. The determination of the First-tier Tribunal is set aside.
12. The appeal is allowed.
13. There is no order for anonymity.



Upper Tribunal Judge Bruce  
27<sup>th</sup> September 2017