IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003588
First-tier Tribunal No:
DA/00192/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 21 August 2023

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

RARES TANASA
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: The appellant did not appear and was not represented.
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 8 August 2023

DECISION AND REASONS

1. The appellant is a national of Romania. The case was listed before me for a continuation hearing of the appeal by the appellant against the decision of the respondent to deport him from the United Kingdom. The appeal has previously been determined unsatisfactorily and, having found an error of law, I allowed an appeal by the Secretary of State and I directed the case be continued in the Upper Tribunal. I have now reverted to the original description of the parties. The person appealing the Secretary of State's decision to deport him is the appellant and the respondent is the Secretary of State.

2. The appellant did not appear before me. He has not appeared in these proceedings. He is believed to be in Romania. The records show that notice of hearing was sent to the only known address in the United Kingdom. I simply do not know if this has come to the appellant's attention but service at this address is the best that we can do and it satisfies the rules. As Mr Terrell pointed out in his submissions, it appears that the appellant was able to initiate the appeal from outside the United Kingdom but in a sense that is irrelevant. He has notice at the

only possible address for service. In the circumstances I decided to continue with the appeal in his absence.

3. I begin by considering the First-tier Tribunal's Decision and Reasons because it sets out the background. This shows that the appellant is a citizen of Romania. He was born in August 1981 and so is now 42 years old. The respondent decided to make him the subject of a deportation order on 24 March 2021 and the appeal is brought under Regulation 36 of the Immigration (European Economic Area) Regulations 2016. It is for the appellant to show that he satisfies the requirements of the necessary Rules that entitle him to be in the United Kingdom but, following **Arranz (EEA Regulations-deportation-test)** [2017] UKUT 00294 (IAC), it is for the Secretary of State to show, on the balance of probability, that deportation is justified.

4. The case was determined in the First-tier Tribunal on the papers.

5. The records show that the appellant arrived in the United Kingdom in 2010 exercising his treaty rights as an EEA citizen. He was convicted of offences of wounding and criminal damage on 21 August 2020 at the Crown Court sitting at Newcastle and was sentenced to sixteen months' imprisonment and ancillary orders. Having received a notice of liability to deportation he initially signed a disclaimer indicating that he wished to return to Romania but then made representations that indicated he contested the deportation order.

6. It was the appellant's case that he and his partner arrived in the United Kingdom in 2010 and lived in Newcastle. Their daughter was born in the United Kingdom in 2011 and their three sons joined the appellant and his partner in 2012. His children were in full-time education in Newcastle.

7. It was the appellant's case that he had no family remaining in Romania. His mother, sister and brother had all removed to the United Kingdom.

8. He expressed himself to be ashamed of the conduct that led to his being sent to prison but it was something committed whilst heavily intoxicated as a result of drinking vodka. He said that the whole experience had put him off drinking alcohol and he had sought assistance to help him manage alcohol abuse.

9. The case for the Secretary of State before the First-tier Tribunal was based substantially on the reasons given to support the decision. There were, of course, no oral representations. The letter drew attention to the seriousness of the offence. However, the judge set the offence in context. The appellant was involved in a confrontation with a female employee in a betting shop. Apparently he had been asked several times not to use two gambling machines at the same time but he would not do as he was told. The victim remonstrated with him and turned off a machine which in his mind led to his losing money. There was a confrontation and damage to property and injury to the woman attendant. The sentencing judge noted that there was a permanent scar on the woman's face and long-lasting psychological injury.

10. Paragraph 25 of the First-tier Tribunal's decision and reasons is particularly helpful. There the judge said:

> "The Respondent refers to the MAPPA assessment conducted by the Probation Service and notes that the Appellant was assessed as level 3. The purpose of MAPPA is the protection of the public. The Respondent asserts that a level 3 assessment indicates that the Appellant is considered to pose an immediate danger to the public. The fact that he is actively managed under various strategies is also an indication that he poses a continuing risk, noting the requirement for the Appellant to regularly report to the police and

> to comply with certain other restrictions. It is submitted that this level of management indicates that the Probation Service has not seen evidence of rehabilitation and that there has been no change in his personal circumstances".

11. The judge recorded the offender manager noting in the OASys assessment that the appellant presented a low risk of reoffending and a medium risk of harm if he did go on to reoffend. The respondent regarded the risk of harm sufficiently great that it was a risk to the public even though chances of reoffending were low. The appellant was then 39 years old and in good health. There were not any particular problems in the way of his being deported such as health issues and although he had extended family in the United Kingdom, he had not satisfied the respondent that he was particularly dependent on them or, presumably, that they were particularly affected by his removal. The respondent took the view that the appellant could establish himself in Romania and could get help there.

12. The judge then quoted from paragraph 37 of the Reasons for Refusal Letter and I do the same. It is important. The respondent said:

> "Your deportation is conducive to the public good and in the public interest because you have been convicted of an offence for which you have been sentenced to a period of imprisonment of less than four years but at least 12 months. Although the Immigration Rules and section 117C of the 2002 Act do not apply to you directly, they have been used as a guide for considering your Article 8 claim. Paragraphs 398 to 399A of the rules and sections 117C (3) to (5) of the 2002 Act reflect Parliament's view that the public interest requires the deportation of those sentenced to less than four years but at least 12 months' imprisonment unless an exception to deportation is met or unless there are very compelling circumstances over and above those described in the exceptions to deportation. The exceptions are set out at paragraphs 399 and 399A of the Immigration Rules and sections 117C (4) and 117C (5) of the 2002 Act. Therefore, consideration has been given to whether you would meet the exceptions to deportation on the basis of private and family life".

13. The respondent noted the appellant had four children in the United Kingdom but had not shown they were British citizens or even that there was a genuine and subsisting parental relationship his partner or parental relationship with the children. It follows that the Rules give no reason for him to remain for their sakes.

14. Mr Terrell submitted that I should begin by asking myself what level of protection was available to the appellant. The respondent did not accept that the appellant had been resident in the United Kingdom in accordance with the EEA Regulations for a continuous period of five years. There was independent evidence supported by pay slips and the like showing significant periods of employment in the United Kingdom but not for the entire time. The Secretary of State did not accept that the five years had been established.

15. The Secretary of State then indicated that the appellant's deportation was necessary to maintain public order and prevent social harm as well as protecting public services. This was a reference to the cost of prosecuting him. Maintaining public order was related to his having committed an offence and still being subject to a permanent Restraining Order. Prevention of social harm was an indication of the detrimental effect that criminals have on society generally.

16. The refusal letter referred to the OASys assessment by the offender manager saying that the appellant was at a medium risk. There is a quotation from the report where the offender manager said:

> "When [the appellant] is intoxicated, stressed, engaging in gambling, and perceives conflict/confrontation – Whilst there are identifiable areas linked to risk of harm, they appear to currently be manageable and [the appellant] presents as motivated to engage with restrictions/interventions to ensure they remain so. Therefore risk is not imminent and is assessed as medium".
>
> "If there is any future contact – there is nothing to suggest that [the appellant] poses an ongoing risk of physical harm to [the woman in the betting shop]. He presents with a good degree of victim awareness and empathy. However, it is noted that she is concerned about further contact with him and should there be any, there would be a risk of her suffering emotional harm".

17. Nevertheless the letter noted, correctly, that the offender manager found that the appellant posed a low risk of reoffending. The medium risk arises if he chose to reoffend. The letter also makes the observation that having family links in the United Kingdom did not prevent him offending and it refers to there being no evidence of him undertaken rehabilitative works in prison.

18. This is a case where there is no bundle from the appellant.

19. I have directed my attention to the items in the respondent's bundle and particularly under the headings E, F, G and H but Headings E and F are essentially formal parts. Heading G at page 53 of the bundle begins with a letter from the appellant dated 30 September 2020. There he introduces his partner and family details which I have already indicated above. It is there that he professes his intention to give up drink and work with DART.

20. There is then a letter from the school where three of the children attend. It is a very short letter but is on proper notepaper so lends itself to being checked and simply identifies the children and the school that they attend. This might not seem very much to the head teacher who wrote the letter but it is helpful. Schools are often very aware of tensions and situations in homes and although their role as educators limits the contribution they can make to interparty proceedings, a simple confirmation that the children are known to the school can be very helpful and I am grateful to the head teacher for taking the trouble. I make a similar comment regarding the academy where the other child attends. There is also a reference from an employer dated 8 June 2020. It is not signed and is not on company notepaper. This diminishes the value that can be given to it but it simply purports to confirm that the appellant has worked for a particular firm as a builder and painter and has gained respect for the way he did that work. There is tax information as indicated in the review of the refusal letter and a tenancy agreement.

21. I have considered this information; I do not find any of it particularly illuminating and to the extent that commentary is necessary I have already picked it up in my review of the letter. I have to consider the case as a whole. I am not satisfied that there is in fact five years' continuous residence in accordance with treaty rights. There is a gap in the evidence that may not have been very hard to fill. It is possible that the appellant was in the United Kingdom in part exercising treaty rights as a dependant of his wife. It is also possible that when he was not in work he was looking for work but having had a deficiency drawn to his attention he has done nothing to remedy is and I am not persuaded that he has exercised treaty rights for 5 consecutive years.

22. However, my biggest concern is about his future behaviour. I am inclined to give genuine but limited weight to his protestations of regret and resolve to give up drink. The regret may very well be genuine. Prison sentences are intentionally unattractive and I accept that the appellant did not come from Romania to the United Kingdom with a view to attacking a woman in a betting shop. He may well be utterly ashamed of himself but the core of his problem was drinking too much and uncontrolled gambling. Both are bad and he was doing them together. He knows that and has recognised it but I have not seen anything other than a protestation of intent to support a conclusion that he has reformed and experience suggests that both addictions are hard to break.

23. I want to give a lot of respect to the opinions in the OASys Report. They are not offered lightly but by people with experience whose preparations are thorough. I have reminded myself of the provisions of Regulation 27 of the Immigration (European Economic Area) Regulations 2016 and particularly of 27(5)(c) that 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".

24. The Secretary of State must justify her decision and I am satisfied that the appellant comes within these Rules. His conduct is a threat. As far as I know he has not repeated his bad behaviour and has professed an intention to give up but it is not proved that that is a realistic option. I might have been able to reach a different conclusion if he had attended before me and exposed himself to cross-examination but he did not do that. I do not accept that his protestations of intent made around the time that he was finishing his sentence when, presumably, it is much harder to gamble and to consume alcohol to excess is sufficient reason to accept that he can change. I find that the appellant is somebody who struggles with gambling and drink and there is a real risk of getting into bother again which he has not satisfied me that he has addressed. It follows that I dismiss his appeal under the Regulations.

25. There is always a potential claim on Article 8 grounds but there is so little evidence about what his family circumstances are I just cannot begin to examine it. All I can say about the children is that, from what I have seen, their best interest lies in remain together with their mother but I do not know nearly enough to reach that conclusion with any confidence. There is not the slightest reason to think that he would be in any position (or have any inclination) to take the children out of the United Kingdom to spite their mother or any of that kind of horrible behaviour which we see from time to time. Nevertheless there is nothing here that I can latch on to that enables me to allow the appeal responsibly on Article 8 grounds. I am just not able to say what the interference is.

26. I have a lurking concern in this case. There is some evidence that the appellant has removed to Romania under the supervision of his wife who is sorting him out. This is not compelling and I do not make any finding that this has occurred. However, I do have this lurking anxiety that the appellant has, ironically, been frustrated from presenting his case by reason of leaving the United Kingdom and abandoning his links here because he has been under the supervision of a wife who is showing great support. All I say about this is if on some future occasion there is an application to discharge the order that he be removed to permit his return great care is taken to ensure undue weight is not given to the decision that I have made which is made without the benefit of hearing from the appellant.

27. Nevertheless for all the reasons given I dismiss this appeal.

Notice of Decision

28. The appellant's appeal is dismissed.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 August 2023