IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001286

First-tier Tribunal No: DA/00238/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 19th June 2024

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

MCN
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Galliver-Andrew instructed by BID
For the Respondent: Ms S Rushforth, Senior Home Office Presenting Officer

Heard at Field House on 3rd May 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals against a decision of the respondent dated 5th July 2021 which made a deportation order against him on the grounds of public policy in accordance with Regulation 23(6)(b) of the European Economic Area Regulations 2016 (the 2016 EEA Regulations).

2. The appellant is a Romanian national born on 12th October 1990 and his immigration history is as follows:

   (1) He claims to have entered into the United Kingdom in 2016 but this is disputed. There was a record of the appellant leaving the United Kingdom on 8th March 2017.

   (2) On 6th August 2019 the appellant was referred to the Foreign Convictions Unit for consideration of deportation on the basis of his foreign criminal convictions. On 11th March 2020 he was arrested in relation to an investigation concerning matters of affray and possession of an offensive weapon but no further action was taken.

   (3) On 15th June 2021 the appellant applied for settlement through the EU Settlement Scheme and it was alleged he used a different spelling of his surname and failed to mention any previous convictions in Romania as part of his application.

   (4) On 5th July 2021 he was detained and made representations which were refused on 9th August 2021 and the appellant was granted immigration bail on 3rd September 2021.

3. The appellant committed offences while living in Romania as follows:

   "11. On 19th November 2007 at Court Bacau in Romania, the Appellant was convicted of robbery. He was sentenced to 3 months imprisonment suspended for 1 year and 3 months.

   12. On 5th July 2010 at Court Bacau, Romania, the Appellant was convicted of 2 counts of robbery for which he was sentenced to 2 years imprisonment.

   13. On 4th November 2011 at Court Bacau, Romania, he was convicted of theft for which he was sentenced to 1 year and 5 months imprisonment suspended for 2 years.

   14. On 11th April 2012 at Court Bacau, Romania, the Appellant was further convicted of 2 counts of robbery for which he was sentenced to 5 years imprisonment.

   15. On 7th November 2012 at Court Bacau, Romania, the Appellant was convicted of robbery. He was sentenced to 2 years imprisonment.

   16. On 28th May 2015 at Court Bacau, Romania, the Appellant was convicted of robbery for which he received a sentence of 2 years 6 months and 513 days imprisonment".

4. In a decision promulgated on 10th March 2023 First-tier Tribunal Judge G R Williams dismissed the appellant's appeal against deportation further to the 2016 EEA Regulations and also on Article 8 ECHR grounds.

5. The appellant appealed and the matter came before Deputy Upper Tribunal Judge Jarvis on 12th September 2023.

6. Judge Jarvis found material errors of law in the decision of Judge G R Williams and at [31] of his decision found that the legal emphasis in a deportation under 2016 EEA Regulations is upon the respondent proving on the balance of probabilities that the relevant EEA national criminal constitutes an ongoing threat (Regulation 27(5)(c)) and, if the respondent does not establish this, then the assessment of proportionality does not even arise.

7. Judge Jarvis concluded that Judge G R Williams placed undue emphasis on the potential relevance of documentary evidence of rehabilitation in assessing whether or not the respondent had lawfully established that the appellant in this case was a relevant threat at the date of the hearing.

8. In terms of the assessment under Article 8 Judge Jarvis accepted the appellant's point of appeal which was that in **HA (Iraq)** the appeal was predominantly centred

> *"upon a situation where an appeal is within a short time of the foreign national criminal being released from their custodial sentence. In this case, the last prison sentence was in 2015 and the Judge's finding that the period between 2015 and the hearing constituted a short period of time by reference to the length of time during which the Appellant was committing those offences in Romania, materially mischaracterises the core point being made in HA".*

9. Judge Jarvis found that Judge Williams' conclusions in respect of proportionality could not stand as they were predicated on a flawed assessment of the prior question of whether or not the appellant was a genuine, present and sufficiently serious threat and further the judge erred by nullifying

> *"the relevance of the Appellant's family life with his partner, children and stepchildren in the United Kingdom when considering issues related to integration. It was an error for the Judge to refuse to give any weight whatsoever to the Appellant's established family life with his partner and children when assessing the proportionality exercise".*

10. Judge Jarvis directed that the findings in respect of the appellant's family life with his partner, children and stepchildren were preserved, and also preserved was the judge's finding at [41] (which was not challenged by the appellant) that he had not given a reasonable explanation for not disclosing his Romanian convictions in the EUSS application form.

11. Judge Jarvis did not preserve the judge's findings about the appellant's use of a different spelling of his surname in the EUSS application.

12. It was directed that the hearing of the re-making appeal would be in the Upper Tribunal and the matter came before the Upper Tribunal for remaking. At that hearing on 3rd May 2024 Ms Rushforth accepted that the assessment regarding family life and its effect on the appellant's removal was still at large.

13. The appellant attended and gave oral testimony through a Romanian interpreter whom he confirmed he could understand. He adopted his statement. Under cross-examination he denied that he had used the name N…. with a k. Ms

Rushforth put it to the appellant that the question on the form, the extract of which she produced at the hearing and no objection was raised by Mr Galliver-Andrew, as to previous convictions related to those abroad and she emphasised that the question on the form was clear as to whether he had been known by any other names and the appellant denied the same and confirmed that he was not lying. The appellant stated that he and his partner had children and they would not be able to support themselves and their five children in Romania. They have jobs here and his job would become permanent.

14. In relation to his failure to disclose previous convictions on his EUSS application form he was asked what led him to believe that it only referred to offences in the UK. He stated that he had not been through this situation before and when he read it he thought it referred to this country. Everything in Romania had "ended" for him and so he did not think there were issues in that regard.

15. The appellant's partner Ms MG also attended and adopted her statement.

16. In her submissions Ms Rushforth relied on the reasons for the refusal letter pointing out the appellant had six convictions for eight offences in Romania. He was afforded the lowest rung of protection and she submitted he was an ongoing threat by virtue of those convictions, his deception in the EUSS application form where he declared that he had no convictions without any reasonable explanation, and thirdly he had used a different name in the UK albeit he said he was not known by any other name. With reference to Schedule 1(7)(a) the integrity of the system, (f) exclusion and maintenance of public confidence, and (j) protecting the public, the appellant remained an ongoing threat.

17. Furthermore, it was proportionate to remove him, he did have a genuine relationship with a British citizen but the evidence was not such that it would be disproportionate to remove him. This amounted to a matter of preference. The appellant is in a temporary job and he could find another in Romania. The family could communicate via modern methods of communication and visits. It was not unduly harsh for the appellant either to be separated from the family or the family to relocate in Romania.

18. Mr Galliver-Andrew pointed out that the burden of proving that a person represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society under Regulation 21(5)(c) of the EEA Regulations rests with the Secretary of State. The respondent had not served a Police National Computer printout showing the appellant's convictions in Romania (or indeed in the UK) and there was no evidence as to how those offences could be interpreted. He submitted that the sentences could not be as they were presented or else the appellant would be imprisoned for the entirety of the time he was in the United Kingdom.

19. Further, the decision to deport the appellant was not proportionate under Regulation 27(5). Judge Williams had gone on to speculate about the seriousness of the offending but that was held to be an error of law. The burden was on the Secretary of State to establish the seriousness of the offending and that had not been discharged.

20. However, Mr Galliver-Andrew confirmed that the appellant did not dispute what was in fact recorded at [11] to [16] of Judge Williams' decision and recited at [3] above.

21. Mr Galliver-Andrew submitted that the question of the spelling of the name is a significant factor in the finding of dishonesty by Judge Williams. The appellant was not an English speaker and his understanding of the question in relation to his previous convictions was met with an entirely plausible explanation.

22. The appellant had engaged in no offending in the UK since his arrival and no offending of the nature that is alleged by the Secretary of State, that is robbery and theft, such that he was an ongoing threat. There was nothing to show that he had a propensity to continue committing these offences and had not done so for 9 years. He was older and settled and now had a family and had not committed any offending which would fall into the category under Regulation 27.

23. He had cohabited with his partner since April 2021 and the only conviction he had received was for breaching Covid restrictions when he was driving his children from one place to another in the highest level of lockdown and no one was allowed to be out. That is not of the same category as offending that took place in Romania. The judge before the First-tier Tribunal had criticised the appellant for not producing any evidence from a probation officer but that would not be relevant in the UK as he had not engaged in any offending. The Covid offence would not warrant the involvement of a probation officer and there was simply speculation on the offences committed in Romania. Weight should be given to the integration of the appellant in the light of his family and children. Since arriving in the UK he had gone on to have two biological children, he had turned his life around and now had a job. He was extremely important to Ms G his partner in her ability to care for the children and he would be separated from the rehabilitative influences. The best interests of the children were a significant factor although not a trump card and note should be taken of the independent social worker's report.

24. Turning to the allegation of dishonesty and his spelling of his name, the appellant's evidence is that he does not know where that entered the system and he had always used the name of N…c with a c, not a k. It could be seen that his Romanian ID document, his HMRC document, his birth certificates and all formal documents contain the correct spelling with a c.

25. Albeit that there was a finding preserved by the judge, once the question over the name was resolved, that detracted from the criminal offending and the declaration finding by the judge and in effect undermined the finding at [41].

26. The independent social worker report dated 27th January 2024 confirms that the best interests of the five children were to remain in the UK with their mother and the appellant who was a solid role model. The evidence of the medical records of Ms MG corroborated what was said in the social worker's report and specific reference was made to the health condition of the mother. Close contact between the parties was consistently sustained throughout the administrative detention between July 2021 and October 2021, albeit the social worker report described the effects on the children and his partner.

27. There was no evidence from a probation officer because the appellant had not been involved in offending.

28. The Secretary of State had not discharged the burden on the intention to deceive either.

29. The appellant in terms of rehabilitation had come to the UK and had two biological children and a relationship which was settled and he now had a job. The circumstances were reflected in the independent social worker's report which I was encouraged to read very carefully. This demonstrated how important the appellant was to Ms MG and her ability to care for the children. Removing the appellant from the UK would remove the rehabilitative influences. It was acknowledged that the best interests of the children was not a trump card but it was an integral part of the proportionality assessment. The social worker had addressed the issue of the long distance relationship and although considered it was possible she doubted it could promote and protect ongoing meaningful contact bearing in mind it would be hindered by the family's lack of funds.

30. I was also referred to the statement of the grandparents of the children, and referred to the medical reports in terms of Ms MG's emotional difficulties. I was referred to the social worker's addendum report of 11th February 2024 and a request for an anonymity order was made because of the children and the very sensitive nature of the issues raised. The medical reports in the bundle in relation to Ms MG supported the submissions made in terms of her medical and mental health difficulties.

Conclusions

31. The conclusion of Regulation 23 of the 2016 EEA Regulations sets out the provisions with regard to the exclusion and removal from the United Kingdom:

> *"**Exclusion and removal from the United Kingdom***
>
> *23. ...*
>
> *(6) Subject to paragraphs (7) and (8), an EEA national who has entered the United Kingdom or the family member of such a national who has entered the United Kingdom may be removed if –*
>
> *(a) that person does not have or ceases to have a right to reside under these Regulations;*
>
> *(b) the Secretary of State has decided that the person's removal is justified on grounds of public policy, public security or public health in accordance with Regulation 27; or*
>
> *(c) the Secretary of State has decided that the person's removal is justified on grounds of misuse of rights under Regulation 26(3)."*

32. Any such deportation is required to be in accordance with Regulation 27 of the 2016 Regulations as follows:

> *"**Decisions taken on grounds of public policy, public security and public health***
>
> *27. (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 right of permanent residence under Regulation 15 except on serious grounds of public policy and 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 in the best interests of the person concerned, 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.

(5) The public policy and public security requirements of the United Kingdom include restricting rights otherwise conferred by these Regulations in order to protect the fundamental interests of society, and where a relevant decision is taken on grounds of public policy or public security it must also 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 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;

(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;

(f) the decision may be taken on preventative grounds, even in the absence of a previous criminal conviction, provided the grounds are specific to the person.

(6) Before taking a relevant decision on the grounds of public policy and public security in relation to a person ('P') 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 P, P's length of residence in the United Kingdom, P's social and cultural integration into the United Kingdom and the extent of P's links with P's country of origin".

33. Schedule 1 of the 2016 Regulations sets out the fundamental interests of society as follows:

> *"**Considerations of public policy and public security***
>
> *1. The EU Treaties do not impose a uniform scale of public policy or public security values: member States enjoy considerable discretion, acting within the parameters set by the EU Treaties, applied where relevant by the EEA agreement, to define their own standards of public policy and public security, for purposes tailored to their individual contexts, from time to time.*
>
> ***Application of paragraph 1 to the United Kingdom***
>
> *2. An EEA national or the family member of an EEA national having extensive familial and societal links with persons of the same nationality or language does not amount to integration in the United Kingdom; a significant degree of wider cultural and societal integration must be present before a person may be regarded as integrated in the United Kingdom.*
>
> *3. Where an EEA national or the family member of an EEA national has received a custodial sentence, or is a persistent offender, the longer the sentence, or the more numerous the convictions, the greater the likelihood that the individual's continued presence in the United Kingdom represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.*
>
> *4. Little weight is to be attached to the integration of an EEA national or the family member of an EEA national within the United Kingdom if the alleged integrating links were formed at or around the same time as –*
>
> *(a) the commission of a criminal offence;*
>
> *(b) an act otherwise affecting the fundamental interests of society;*
>
> *(c) the EEA national or family member of an EEA national was in custody.*
>
> *5. The removal from the United Kingdom of an EEA national or the family member of an EEA national who is able to provide substantive evidence of not demonstrating a threat (for example, through demonstrating that the EEA national or the family member of an EEA national has successfully reformed or rehabilitated) is less likely to be proportionate.*
>
> *6. It is consistent with public policy and public security requirements in the United Kingdom that EEA decisions may be taken in order to refuse, terminate or withdraw any right otherwise conferred by these Regulations in the case of abuse of rights or fraud, including –*
>
> *(a) entering, attempting to enter or assisting another person to enter or to attempt to enter, a marriage, civil partnership or durable partnership of convenience; or*

(b) fraudulently obtaining or attempting to obtain, or assisting another to obtain or to attempt to obtain, a right to reside under these Regulations.

The fundamental interests of society

7. For the purposes of these Regulations, the fundamental interests of society in the United Kingdom include –

(a) preventing unlawful immigration and abuse of the immigration laws, and maintaining the integrity and effectiveness of the immigration control system (including under these Regulations) and of the Common Travel Area;

(b) maintaining public order;

(c) preventing social harm;

(d) preventing the evasion of taxes and duties;

(e) protecting public services;

(f) excluding or removing an EEA national or family member of an EEA national with a conviction (including where the conduct of that person is likely to cause, or has in fact caused, public offence) and maintaining public confidence in the ability of the relevant authorities to take such action;

(g) tackling offences likely to cause harm to society where an immediate or direct victim may be difficult to identify but where there is wider societal harm (such as offences related to the misuse of drugs or crime with a cross-border dimension as mentioned in Article 83(1) of the Treaty on the Functioning of the European Union);

(h) combating the effects of persistent offending (particularly in relation to offences, which if taken in isolation, may otherwise be unlikely to meet the requirements of Regulation 27);

(i) protecting the rights and freedoms of others, particularly from exploitation and trafficking;

(j) protecting the public;

(k) acting in the best interests of a child (including where doing so entails refusing a child admission to the United Kingdom, or otherwise taking an EEA decision against a child);

(l) countering terrorism and extremism and protecting shared values".

34. It was agreed that the appellant was afforded the lowest level of protection under the 2016 Regulations. It is important to recognise that the threat is a threat to the requirements of public policy which includes the fundamental interests of society which is a broad concept and that "past conduct can only be

taken into account insofar as it provides evidence of personal conduct constituting a present threat to the requirements of public policy which implies that the person concerned has a propensity to act in the same way as in the future".

35. As noted it is the Secretary of State which needs to discharge the burden of showing that the appellant presents a genuine, present and sufficiently serious threat to the fundamental interests of society and the decision to deport was in accordance with the 2016 Regulations and if so, whether the decision would be proportionate in all the circumstances.

36. Turning to the question of the dishonesty of the appellant, in terms of the spelling of his name as the judge previously found at [40] there was no evidence presented by the respondent to substantiate any of the suggested deliberate alternative spellings of the appellant's name. The respondent's own documents refer to the spelling of the appellant's name with a k at the end but there is no evidence of the use of that spelling in the appellant's name in any other part of the evidence and the documentation presented by the appellant including his witness statement, his HMRC documentation and national insurance number, tenancy agreement, birth certificates and HMCTS fine notice all detail his name ending with a c. As such, there is an insufficiency of evidence to show that the appellant had used alternative spellings of his surname, and I am not persuaded that the mere inclusion of the name with a k at the end can be ascribed to the appellant's use merely because this has caused the appellant's records to be traced following his entry to the UK. It could simply be a perpetuation of the misspelling from the outset possibly by the respondent. Although I note the direction at [41] that the appellant had made his application for leave to remain and failed to declare that he had previous convictions in Romania, this assessment was made by the previous judge immediately following the finding on the name use. Mr Galliver-Andrew submitted that this undermined the overall assessment and I agree. The appellant did fail to declare his previous convictions in Romania as he thought it was all about UK convictions, it is possible that the appellant misunderstood the form and indeed it would appear that he filled out the form himself and in a second language. Albeit that it is a serious matter to make a false declaration to the immigration authorities and maintaining the integrity and effectiveness of the immigration control system is one of the fundamental interests of society, the appellant has not been subsequently charged and convicted of any attendant offence,

37. The appellant's one conviction since entering the UK was an offence in breaching the Covid regulations that were in force at the relevant time and although the appellant paid the costs in the sum of £1,760 with costs of £120 and a surcharge of £176 this was a fine.

38. To date the appellant has been in the UK since approximately 2017 and has been convicted and sentenced with a fine for Covid regulations. This does not persuade me that he continues to represent a genuine, present and sufficiently serious affecting one of the fundamental interests of society. I have taken into account the relevant provisions of Schedule 1 as enjoined to do by Ms Rushforth and acknowledge the very serious nature of the description of offences of robbery dating from between 2007 and 2015 but it has now been approximately nine years since the commission of serious offences by the appellant.

39. I also take note that he has not offended whilst in the UK such as to engage the services of a probation officer and who has merely been fined. I agree with Mr

Galliver-Andrew that without undermining the seriousness of the offences as described, I am not persuaded that this is the kind of extreme case in which past conduct alone may suffice in constituting a present threat as to the requirements of public policy. There is no probation report and no OASys Report because the appellant has not been engaged in the level of offending to warrant such reports. Nor are there any sentencing remarks to which I may refer.

40. Even if I am wrong that the respondent has not shown that the appellant is a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, I note that prior to taking any relevant decision on the grounds of public policy the decision maker must make a holistic proportionality assessment and take into account considerations such as age, state of health, family and economic situations, and the person's length of residence in the UK. I note that in the absence of integration and a right of permanent residence the future prospects of integration cannot be a weighty factor and I note that the more serious the risk of reoffending and the offences that a person may commit, the greater the right to interfere with the right of residence. However as noted, there are no reports which indicate the propensity of the appellant to reoffend.

41. I take into account that the appellant was no doubt younger when he committed the offences of robbery, he is now nearly 34 years and more mature. I turn to his family circumstances in the UK. The appellant has provided letters from family to indicate their support for him and I note in particular the letter from, the children's maternal grandparents, who remark upon the devastation to the family should the appellant be removed from the United Kingdom.

42. What is clear from the medical notes of Ms MG is that the appellant's partner was the subject of sexual abuse as a child and this is recorded in 1989 (noting she was born in 1984) and she experienced serious depression followed by deliberate self-poisoning in 2003. Also recorded in the GP notes are that the appellant's partner Ms MG suffered domestic abuse in 2015 and was referred to a domestic abuse agency because of her history of domestic violence with a previous partner. It was recorded in 1990 that the appellant's partner was subject to a child protection plan. Finally there is a record that the appellant's partner experienced sepsis in September 2022. What is clear is that the appellant's partner Ms MG has experienced some significant mental health and physical health problems in the past and these are evidenced in the medical notes over time and support the independent social worker report written in relation to the family overall.

43. Both the witness statements of the appellant and Ms MG dated 11th April 2024 confirmed the devastation that would occur to the family should the appellant be removed. This is supported by the report of the independent social worker Ms Sally-Anne Deacon dated 1st January 2024 and her addendum report of 11th February 2024 (I note that it is marked as Sonia Hay in the index which is incorrect). The expert witness is well qualified having a certificate and qualification in social work dated 1994 and having worked exclusively in the area of children's safeguarding, fostering and adoption within local authorities and the voluntary sectors nationwide. She is registered with Social Work England as a fully qualified practising social worker and is recognised by the British Association of Social Workers as being independent. I consider her to be well versed in the welfare of children. She identifies that there are five children, SG born in 2006, AG born in 2011, MG born in 2017, ZNG born in 2021 and CNG born in 2022. She interviewed the parents independently but also the children independently of

their parents and had the Home Office appeal bundle together with relevant decisions and school letters and medical reports before her. She confirms that the couple met in approximately 2020 and developed their relationship slowly.

44. She identifies that the eldest child SG has been diagnosed as having anxiety and is on the waiting list for psychological input. She described the stress and trauma of her mother being ill in intensive care and also of the appellant being arrested in the middle of the night to be removed to a detention centre. SG is old enough to be able to give an independent account. She states that they were happy for the first time as a family and she describes the appellant as being the father she never had. AG also described the appellant as being "very good to us all and is 'hardworking and supports us financially but, more than that, he loves us and we love and trust him. We have a little brother and sister [the appellant's and Ms MG's biological children] now and we are a proper family'". The middle child MG also described the appellant as being a great dad and the social worker candidly accepted that ZNG and CNG were too young for her to be able to ascertain their wishes and feelings.

45. The social worker added that the head teacher of the children's school confirmed that the appellant drops off and collects his son on a regular basis and various referees refer to the appellant as being family oriented, deeply involved, caring, genuine, kind, hardworking, adored and responsible and a positive influence on the children. She confirmed that the appellant treated the children equally and the importance of the role of a father in family life and remarked upon the effect of the appellant's physical absence from the children's lives between July 2021 and October 2021 when he was in administrative detention and although they maintained telephone contact it was described as being "extremely hard".

46. The independent social worker opined that sustaining face to face contact in Romania would be hindered by the family's lack of funds and his removal would render his partner a single, unemployed parent with little financial support and therefore financing regular visits to Romania would be difficult, if not impossible.

47. She remarked upon the parents' wish to maintain the children's stability, their relationships with the UK based maternal family and their identity as British children and their friendships and their education. It is clear to me that certainly the middle child is at a secondary school and it would be very detrimental to their best interests to be removed in the middle of their critical educational years. Ms MG and her children were all born and raised in the United Kingdom and are British citizens and it would be hugely disruptive particularly in the light of the mental and physical health difficulties which the mother has endured to relocate to Romania, notwithstanding that there are medical facilities there.

48. The children are clearly embedded in the United Kingdom and there is no indication that they have any knowledge of the Romanian language at all. Overall I am persuaded by the independent social worker report that the stability and the security of the children would be shattered by the departure of someone, namely the appellant, who has been described as having a significant degree of "responsibility for their welfare".

49. The eldest child suffers with anxiety, AG is approaching important years academically, as is the middle child. It is quite clear that the appellant is fully immersed in the day-to-day lives of the children and his partner would be extremely negatively affected by her partner's removal. It is quite clear that the

best interests of these children which although not a trump card would be best served by the ongoing physical presence of the appellant.

50. The social worker in her addendum report recorded that the appellant's partner and her sister were the subjects of repeated sexual assaults and that, despite her mother and the police believing her and taking the necessary action, the perpetrator was not prosecuted and this exacerbates the feelings of anger and distress that the appellant's partner has and the independent social worker noted that "Sexual abuse can have a profound psychological effect that lasts into, and throughout adult life. Existing research has linked child sexual abuse with low self-esteem and mental health conditions" and the social worker relates the associated common issues as including depression and attempted suicide.

51. The social worker reported that the appellant's partner did not report mental health vulnerabilities at this time and "presents as a warm and devoted parent to her children" but the possibility of difficulties emerging in the future could not be discounted particularly at times of stressful life events "such as separation, financial hardship or caring for five children singlehandedly. Impaired parenting as a result of parental mental ill health is a patent risk factor in the development of emotional and behavioural problems in children" and she noted that children whose parents suffer from severe or enduring mental ill health can at times be at risk of significant harm. She remarked that the appellant was aware of his partner's historical life events and was said to be supportive and reliable as was the case when Ms MG experienced sepsis and was hospitalised and she concluded that should Ms MG become unwell again the appellant will act and be deemed by the authorities as a protective factor and that any statutory action needed would be offset against his presence which may avoid the necessity of children being received into local authority care which would have devastating consequences for the children.

52. Owing to the extensive medical reports provided in relation to Ms MG which extend back over time, I am quite persuaded that the social worker was not exaggerating and not engaging in undue speculation.

53. The Secretary of State is proposing to remove the appellant to Romania where he states he has no contacts and the appellant has already removed himself from a country where he was clearly engaged in criminal behaviour. Some, albeit limited, weight should be given to the concept of rehabilitation and I note that the appellant has save for the Covid experience not engaged in criminal behaviour which has brought him before the courts and I find that his family environment is a positive factor for him.

54. The school letter from the head teacher Ms NR, which I accept as independent and from someone who engages with the children and thus parents on a regular basis, confirms that the appellant was engaged in supporting the children, for example doing school runs and attending parents' evenings, and supporting his partner, the children's mother and MG who is his stepchild.

55. I consider that should the appellant be removed to Romania the protective factors will be removed both for him and for the family. Although the appellant is relatively young, fit and able and can speak Romanian and has not spent the majority of his life in the UK, even if I were to find that he were a genuine, present and sufficiently serious threat to the fundamental interests such that he should be removed under the EEA Regulations, which I do not, I find that the decision to remove him would not be proportionate. I have taken into account

the fundamental interests of society but the factors I have outlined above including the social and economic factors, the family responsibilities and the impact on the family, overall outweigh the decision to remove him.

56. Even if I were wrong about that in terms of the application of Section 117 of the Nationality, Immigration and Asylum Act which does not strictly apply to EEA nationals, the appellant does not appear to have been convicted for an offence of over four years and I have reviewed the evidence and find that the removal of the appellant would clearly be unduly harsh in terms of the children's welfare themselves and indeed that of his partner.

57. I therefore find that the appellant's appeal succeeds.

Notice of Decision

The appeal is allowed under the Immigration (European Economic Area) Regulations 2016.

Helen Rimington

Judge of the Upper Tribunal Rimington
Immigration and Asylum Chamber

18th June 2024