Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00511/2017 V

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 17 July 2020	**On 6 August 2020**
via Skype	

Before

UPPER TRIBUNAL JUDGE ALLEN
UPPER TRIBUNAL JUDGE RINTOUL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

DENIS VISCU
(ANONYMITY ORDER NOT MADE)

Respondent

Representation:
For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer
For the Respondent: Mr A Briddock, instructed by Turpin & Miller solicitors

DECISION AND REASONS

1. The Secretary of State appeals against the decision of the First-tier Tribunal made on 16 November 2017. That, in turn, was a decision to allow the respondent's appeal against a decision of the Secretary of State made on 5 September 2017 to make a deportation order against him pursuant to Regulation 23(6)(b) of the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations").

Background to this appeal

2. The respondent is a citizen of Romania born on 22 June 1999. He has lived in the United Kingdom since June 2007 when he travelled here with his mother and siblings to join his father who had arrived here and was exercising Treaty rights.

3. Between 4 July 2014 and 9 March 2017, the respondent was convicted of 20 criminal convictions on a total of 14 occasions, resulting in him being sentenced to three Detention and Training Orders ("DTO"). Two of those were for 4 months; the last was for 12 months, imposed on 9 February 2017.

4. On 5 September 2017, the Secretary of State then made a decision to deport the respondent, relying on these convictions. In doing so, she accepted that he had acquired the right of permanent residence, but did not accept that he was entitled to the enhanced level of protection under reg. 27(4) of the EEA Regulations because the continuity of his residence had been interrupted by the time he had spent in custody before he had reached 10 years' continuous residence.

5. On appeal, the First-tier Tribunal accepted the respondent's submission that a DTO did not count as imprisonment and, finding therefore that there had not been an interruption in continuity of residence, allowed the appeal.

6. The Secretary of State was granted permission to appeal to the Upper Tribunal which, dismissed the appeal on 15 March 2018 dismissed the appeal, but on 4 July2018, granted permission to appeal to the Court of Appeal. In the interim, the respondent was sentenced to serve two period of 24 months' youth detention.

7. The appeal then came before the Court of Appeal on 11 June 2019. In its decision reported as SSHD v Viscu [2019] EWCA Civ 1052 the court allowed the respondent's appeal on the basis that the First-tier Tribunal had erred in finding that periods spent in youth custody did not interrupt continuity of residence. As is recorded at [35], the Secretary of State accepted that there had not been an overall assessment as required by reg 3 (4) (c) of the EEA Regulations and the court [53] remitted the appeal to the Upper Tribunal for "further consideration in the light of an overall assessment to be made by the appellant".

8. The assessment was, unusually, in the form of a skeleton argument from the respondent dated 15 October 2019 provided for a case management hearing on 31 January 2020.

Scope of the appeal as set out in the order of the Court of Appeal

9. The order from the Court of Appeal provides:

> '3. The case is remitted to the Upper Tribunal for it to decide:
>
> (a) whether the Respondent is entitled to protection from expulsion under regulation 27(4)(a) of the Immigration (EEA) Regulations 2A16, by virtue of the matters in regulation 3(a) of those Regulations; and

(b) if not, whether the Respondent's deportation is justified on serious grounds of public policy and public security for the purposes of regulation 27(3) of the Immigration (EEA) Regulations 2016.'

10. For the reasons given by the Court of Appeal, the decision of the First-tier Tribunal did involve the making of an error of law, and it is for us to remake it.

The Law

11. The Directive provides - enacted in domestic law in the EEA Regs.

12. The EEA Regulations provide at Reg. 3:

'(3) Continuity of residence is broken when—

(a) a person serves a sentence of imprisonment;

(b) a deportation or exclusion order is made in relation to a person; or

(c) a person is removed from the United Kingdom under these Regulations.

(4) Paragraph (3)(a) applies, in principle, to an EEA national who has resided in the United Kingdom for at least ten years, but it does not apply where the Secretary of State considers that—

(a) prior to serving a sentence of imprisonment, the EEA national had forged integrating links with the United Kingdom;

(b) the effect of the sentence of imprisonment was not such as to break those integrating links; and

(c) taking into account an overall assessment of the EEA national's situation, it would not be appropriate to apply paragraph (3)(a) to the assessment of that EEA national's continuity of residence.'

13. The EEA Regulations also provide at reg. 27:

'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.

(7) ...

(8) A court or tribunal considering whether the requirements of this regulation are met must (in particular) have regard to the considerations contained in Schedule 1 (considerations of public policy, public security and the fundamental interests of society etc.).'

14. we consider that the issue of whether the 10 years was met is and was still live on the basis of which this decision was remitted to us by the Court of Appeal.

15. The Secretary of State's case is that the respondent is not entitled to enhanced protection under reg 27 (4) as he had not acquired 10 years residence by the date of the decision to deport because of the periods of time spent in detention. She also submits that even were that so, the effect of the sentence of imprisonment is to break the integrative links and so he is entitled only to the level of protection provided for in reg. 27 (3).

16. The respondent accepts that periods of imprisonment interrupt the continuity of residence but submits that they simply "pause" the clock, relying on Hafeez v SSHD [2020] EWCA Civ 406.

17. Both parties are, however, agreed that the overall assessment as to whether the integrative links have been broken is an assessment to be undertaken by the Upper Tribunal as at the date of hearing. We accept, following FV (Italy v SSHD) and B v Land Baden -Württemberg that this is correct.

18. But we do not consider that this alters the position established in SSHD v MG Portugal [2014]1 WLR 2441 that the 10 year period is to be assessed from the date of the expulsion decision. We do not accept that anything in FV(Italy), B v Land-Württemberg or SSHD v Vomero [2019] UKSC 35 alters this and we note that the court was careful at [70] to refer to the *overall assessment* being carried out at a time at which the question of expulsion arises, not the date of the decision. Those dates may be separate, and we remind ourselves that Directive 2004/38/EC expressly provides at article 33.2 that:

> '33.2 If an expulsion order, as provided for in paragraph 1, is enforced more than two years after it was issued, the Member State shall check that the individual concerned is currently and genuinely a threat to public policy or public security and shall assess whether there has been any material change in the circumstances since the expulsion order was issued'

19. Further, if the CJEU were intending to alter an earlier ruling of such recent vintage, it would have said so. It is also clear from Vomero that the issue was whether, in the interim, the appellant had acquired permanent residence since 2007 and in Hafeez the court proceeded on the basis that it was the date of the decision to deport which is relevant to the assessment of whether there had been 10 years residence.

20. It is only after a period of ten years residence, deducting time spent serving a prison sentence or time spent in youth custody that, the issue of whether that has broken the integrating links can arise. It is not that a conclusion that the links were not broken erases the gaps in continuity; the completion of the ten years continuous residence prior to the expulsion decision is a condition precedent to the second stage of the test which is whether the integrative links have been broken, a test carried out by a court at a date different from the date of the decision to deport.

21. There are, as the cases establish, two principal questions to be asked:

    (a) Did the individual in question acquire 10 years' continuous residence prior to the date of the expulsion decision, the 10 year period to be calculated omitting time spent in imprisonment?

    (b) If so, did those periods of imprisonment break the integrative links previously forged with the host member state with the result that he is no longer entitled to the enhanced protection?

22. We therefore start our analysis in asking whether the respondent has acquired 10 years continuous residence. In doing so, we have taken as our starting point the chronology provided by the respondent in his bundle.

23. We accept that the respondent arrived in the United Kingdom on 14 June 2007. We accept also that the decision to make a deportation order was made on 5 September 2017, some 10 years and 85 days later. From his own chronology, it is evident that the respondent had by then spent significant periods youth custody: from 16 June 2015 to 16 August 2015 (60 days), from 25 February 2015 to 25 April 2016 (58 days) and from 9 March 2017 to 7 September 2017 (178 days), a total of 296 days. On that basis, and even not counting the days of entry into and exit from custody, he had not at the date of the date of the expulsion decision acquired 10 years residence by a margin of 211 days.

24. Even were we to adopt the date of the Secretary of State's overall assessment set out in Mr Lindsay's skeleton argument, or the date of the hearing on 31 January 2020 when that was submitted as the date from which the 10 year period was to be reckoned, that does not assist the respondent as although he was not in custody between 7 September 2017 and 23 March 2018, that is 196 days so he was at best still 15 days short of 10 years given that by then he had spent a further two years and 8 days in custody between 23 February 2018 and 3 March 2020 and was in youth custody as at that date.

25. While it may well be that if the date for counting back the 10 year period were the date of hearing, the respondent has aggregated 10 years, that is not the basis on which that issue is determined.

26. On that basis, it is unnecessary for us to consider whether any integrative links with this country have been broken. Nonetheless, we have proceeded to do so, out of an abundance of caution. We therefore turn to the evidence, including the oral evidence led before us.

27. We accept from the evidence that the respondent arrived in the United Kingdom at nearly 8 years of age, when he and his siblings and mother came to live with the father. We accept also, that from the age of 12 he was taken into care owing to violence to which he was subjected by his father. It appears from his witness statement, and the evidence from this social worker, Ms Holmes, that he was moved between foster placements and children's homes before moving back to live with the family. We have no reason to doubt that the respondent became alienated and struggled at school, finding it hard to fit and drifting into associating with older boys and then into abuse of alcohol and drugs and associated crime.

28. It was put to the respondent that the real reason his parents had not attended was that they no longer supported him. He denied that.

29. He said that he had not returned to Romania on more than two occasions the last being in 2012. He said he had visited his grandmother who is on her own, his grandfather having died before he was born. He said his father has a brother, but he

was not in contact with him and thought the grandmother was his mother's mother. He said he had not spoken to his grandmother for several years, but his mother might have told her of what happened to him.

30. The respondent also said that he could not hold a conversation in Romanian and said that he would not be able to pick up the language on return.

31. We also heard evidence from Ms Holmes, the appellant's social worker for the past five years. She adopted a letter which she had submitted dated 9 July 2020 which is an addition to her letter of 8 November 2017 which was also before Judge Walker. It was put to her that her letter of 2017 had been optimistic if not overoptimistic as was her current letter. She said this was not so and that for the reason given in the letter the appellant had shown progress. Mr Whitwell submitted that, as Mr Lindsay had said in his skeleton argument, as the judge had noted in the sentencing remarks of 2017 that there were aggravating factors to his offending and that although she had noted encouraging signs the appellant had nonetheless gone on to commit even more serious crimes. He submitted that the frequency, breadth and escalation of the crimes was a worrying factor. The most recent offences involved possession of a blade, heroin with intent to supply and burglary.

32. Mr Whitwell drew attention also to the evaluation of the appellant being at high risk and the OASys Report on the last occasion, asking us to note also the report from Probation in which it was said that he had not complied with the approved premises rules providing COVID restrictions and had therefore been recalled, that there had been issues with him pushing boundaries.

33. He submitted further with regard to Ms Holmes's letters that the same stressors would apply to the appellant as he has no job, lives in the same city.

34. Mr Whitwell submitted that the appellant had not shown that he could not speak Romanian or could not re-acquire the language quickly. He is said to have spoken it up to the age of 10 and that the evidence about the family in Romania was unsatisfactory.

35. Turning to the issue of rehabilitation Mr Whitwell submitted there is no evidence to show that there was no equivalent facilities available for him in Romania and whilst it was a factor, there was insufficient evidence to show that he was engaging with what was on offer in the United Kingdom.

36. In response, Mr Briddock submitted that there is a significant difference to be drawn between offending as an adult and offending as a person under 21 given the express difference in the purposes as set out in Section 42 of the Criminal Justice Act 2003. He submitted it was important to bear in mind that the respondent was a looked after child who had been failed by the system. He submitted we should accept the appellant's account of his circumstances with regard to speaking Romanian and his family and that, were we not to accept the appellant was entitled to enhanced protection, the "serious" threat level had not been made out, submitting we were not bound by the conclusions to that effect coming from Judge Walker, his just being

little more than observations and that a fresh analysis of proportionality was required.

37. We start by assessing the respondent's integrative links. In doing so, we take into account his links with his family as well as with the wider community, education, employment and other links to the United Kingdom.

38. We note from judge Walker's decision that the respondent's parents had supported him [38] and indeed they gave evidence before Judge Walker. The parents have not given evidence before us, the explanation being from the respondent in his witness statement that

> "my parents also visited me monthly whilst I was in custody and we have worked hard to rebuild our relationships which are now much better. Although I am sure they would have come to the Tribunal if I'd asked them, this time I feel more comfortable setting out how things were without having them here."

39. Whilst we note references to the parents in the letters from Ms Holmes, they are not mentioned in the letter from the Probation Service nor is there evidence in the Offender Personality Disorder Pathway team's letter to any ongoing contact with the parents. While Ms Holmes does refer to the parents in her most recent letter, her letter of 8 November 2017, stating:

> "Denis' family visited him regularly whilst in custody and the family have worked hard to re-build their relationships. Since being released from custody, Denis has enjoyed visits to see his family at home."

40. There is no detail in her more recent letter of the respondent's relationship with the parents.

41. We note that the respondent's parents have not on this occasion attended to give evidence. We do not accept, viewing the evidence as a whole that this because, as the respondent says, he thought we would be more comfortable with them. We have no letter from them indicating their continued support. We conclude that the parents do not wish to support him and that there is little connection between them and the respondent.

42. We accept, on the other hand, that there can be less tangible links to the United Kingdom. In this case, the respondent was educated here for between the ages of nearly 8 and 16, formative years. He lived in the wider community, albeit one into which he had difficulty integrating and he speaks English to the extent that we would not have taken him for anything other than a native speaker.

43. The respondent is not employed and has a history of a wide range of offences including offences against the person and most recently supplying class A drug, possession of a bladed weapon and burglary.

44. We consider that a lack of ties to the country of origin may indicate integration into the host member state. While the respondent's evidence on this point was vague, and he was not even sure which of his grandmothers are still alive, we note the evidence of his parents at the previous appeal. It is that there are little or no family ties, and they have not been back to Romania more than once, although the respondent said twice, his evidence was hesitant on that point and at other times appears from correspondence to have mentioned grandparents (plural) living in Romania. The evidence of the parents on the previous occasion as set out in their witness statements is that they had visited Romania only once in the last ten years, in contrast to the appellant's evidence that it had been twice. The mother says little other than that there are two grandmothers, her mother being in her late 80s and the other being elderly. This inconsistency causes us some concern, but unless we were to reject the parents' evidence wholesale, there is a consistency of a lack of contact with Romania or relatives there. Given also the chaotic nature of the respondent's upbringing from the age of 12, it is hardly surprising that he has lost contact with Romania and relatives.

45. Pausing there to take stock, we consider that on the facts of this case, were it necessary for us to make the relevant finding, that the respondent had formed some integrative links to the United Kingdom. These do, however, appear to have broken down as a result of his increasingly serious criminal behaviour.

46. In approaching this issue, we bear in mind what Flaux LJ said in this case:

> "44. The CJEU jurisprudence to which I have referred establishes (i) that the degree of protection against expulsion to which a Union national resident in another member state is entitled under the Directive is dependent upon the degree of integration of that individual in the member state; (ii) that, in general, a custodial sentence is indicative of a rejection of societal values and thus of a severing of integrative links with the member state but (iii) that the extent to which there is such a severing of integrative links will depend upon an overall assessment of the individual's situation at the time of the expulsion decision."

47. Have those links been broken as at the date of hearing? We note the respondent's evidence that he has, having spent two years in HMP Aylesbury and having been put on a six month Kaizen programme, an offender behaviour programme for adult males, that he had begun to turn his life around identifying a "new me profile" and a "new me life plan". He says [12] that his skills have helped him to manage his life better and to make his choices about how he spends time with and does not put himself in risky situations. He also says that he met with a clinical psychologist on a weekly basis and this again has improved his situation.

48. We are not satisfied on the evidence that the respondent has in reality turned a corner. We note that he was recalled to prison for a period of four weeks after breaking COVID restrictions in the place where he was living. We consider that despite Ms Holmes' optimism, and indeed the optimism shown by the sentencing judge in 2017, the appellant has not, in reality, changed his by now ingrained

behavioural traits. Whilst he may be vulnerable, as Ms Holmes submits, he has also carried out a large number of crimes of increasing severity.

49. We do not underestimate the difficulties he has had as a result of being estranged from his family due to domestic violence, difficulties in reconciling his family background with the British culture in which he was growing up and that this led him, living on a deprived housing estate into antisocial behaviour and crime. But there comes a point where, as a young adult, a person from such an upbringing is makes choices. In this case the respondent chose to go on to commit more and more serious crimes despite having served time in youth custody and despite the warning received from the judge and despite the fact that he was facing deportation proceedings.

50. Even had we been persuaded at the date of the hearing before Judge Walker, whose findings we note, that the respondent's integrative links have not been broken bearing in mind his relatively young age and the purpose of youth custody, we consider that the evidence of criminal offending which has occurred since then satisfies us that what integrative links he had have been broken.

51. That is not a conclusion which we reach with any enthusiasm given the abuse from his family and the very serious difficulties the respondent has faced following a family breakdown and him being accommodated by the local authority. But the fact remains that the respondent has no job, no reasonable prospect of employment, and continues to live in the same area as before and where he would, as we accept, be subject to the same stressors as in the past.

52. We accept that we are differing in this respect from the position of Ms Holmes as set out in her most recent letter but we consider that her assessment is overoptimistic and whilst she says that he can now identify and implement strategies that help regulate his behaviour and make better decisions, it is odd that she makes no mention of him being recalled to prison for four weeks at all. It is difficult to square this with the assertion that he shows a high level of commitment to his rehabilitation and whereas she refers to the difficulties he would have if deported to Romania and that he would have no family support she does not state what family support there is at present.

53. Accordingly, for these reasons, taking the evidence as a whole, we do not accept that the respondent would on any view be entitled to the enhanced protection even had he met the ten year threshold.

54. Turning next to the assessment of whether the respondent presents a serious threat, we turn first to the assessments from the Probation Service and his current Offender Manager.

55. The Probation Officer, Ms Burden, who had worked with the respondent from January 2018 to May 2020 wrote on 9 July 2020:

> "At the time I was working with Denis he was assessed as high risk of serious harm to members of the public, this was based on his past and current offending behaviour and the impact of that behaviour on victims which had the likelihood to cause serious harm.
>
> …
>
> He remained assessed as high risk on release from custody as he was untested in the community. This was explained to Denis prior to release. This would require further assessment from his current Probation Officer given he has been in the community for 3 or so months and his time within a restrictive environment i.e. Probation Approved Premises is due to end.
>
> That said, it is also noted that he did exceptionally well during his Kaizen course and that he had continued to demonstrate high levels of compliances but yet, that does not necessarily indicate that the evaluation of high risk is incorrect."

56. Turning next to the email from the current offender manager, Ms Boyd, of 10 July 2020, we note that the respondent did not comply with the Approved Premises rules regarding COVID restrictions and that he was then recalled to prison but re-released. It is also noted that there have been issues in him pushing boundaries, but that "this can be expected". Why that is so is unclear. There are positive observations that he has engaged in the past and has not caused issues that would result his return to prison, equally, it is said that the respondent needs to implement the skills he has learned on the Kaizen course more successfully, and that it takes him time to build his relationship and rapport with agencies involved, this would be jeopardised were he to be deported.

57. There is, however, no express detailed assessment of risk or assessment that the previous high-risk assessment is no longer valid.

58. As regards rehabilitation, there is a lack of evidence of what would be available in Romania. It is, however, likely that the respondent would have difficulty in engaging with new agencies, given the evidence to that effect from Ms Boyd.

59. We accept it is difficult to assess the threat that the respondent poses of committing further crime given the artificiality of the situation which he now lives, during the COVID-19 lockdown. But it is worrying that he faced recall to prison for failing to comply with the regulations and spent a further four weeks in detention. We consider that his prospects of employment are limited albeit that it is difficult for him to get onto relevant courses in the current situation but nonetheless, given the respondent's track record and the lack of time he has spent outside of detention and given his protestations on the previous occasion that he had learnt his lessons, we are not satisfied that he has reformed in any meaningful way or that it could now be said that he does not present a serious threat of reoffending given how he has behaved in the past. We consider Ms Holmes evidence to the contrary to be overly optimistic, as her evidence from 2017 has proven to be in the past.

60. We are therefore satisfied that there is a high risk of the respondent committing crime again. We consider also that the crimes are likely to be of the same seriousness as in the past: possession with intent to supply a class A drug, burglary, and assaults. Given the effect on society of drugs, and in particular those in Class A, as well as the effects on those assaulted, we are satisfied that the need to prevent the scourge of the dealing in illegal drugs and the misery that causes, constitutes a serious reason of public policy, and that the respondent does represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

61. Having reached that conclusion, we now consider whether deportation is proportionate. In doing so we must consider the relative prospects of rehabilitation, in the sense of ceasing to commit crime, between the United Kingdom and Romania. But that is but one factor to be taken into account in assessing proportionality and applying regs. 27(5) and (6).

62. What has been presented to us by the respondent and by Ms Holmes is conjecture but we do consider that the evidence from the Probation Service shows that it took a considerable time for the various agencies to develop a rapport with the respondent in the Kaizen course. That the respondent has difficulty in trusting and engaging with others is consistent with what happened to him as an adolescent and we would expect it to be difficult for him to engage with the authorities in Romania.

63. We accept also that the respondent does not speak Romanian well and certainly does not appear to have practised it much. We bear in mind that the respondent was born in Romania and was raised there until the age of nearly 8. He continued to live in a Romanian speaking household until around 12, but he then appears to have gone into the care system. In that context, he may well no longer be able to speak Romanian, certainly at a sophisticated level, but we are not persuaded that he could not rapidly regain his knowledge, albeit that his knowledge of the written language is likely to be limited.

64. We are not satisfied by the respondent's evidence that he has no relatives in Romania. It would, however, be speculative to consider that they would help him. There is a consistency in the evidence of little or no family contact with Romania.

65. The respondent is, we recall, a healthy adult. We bear in mind also that the respondent has not lived in Romania since he was just short of 8 years of age. He is, however, in good health, and appears now to have few social ties to the United Kingdom, having spent a significant time in detention. As noted above, his integrative links have been broken. While he may have difficulty in gaining employment in Romania, we have not been taken to any documentary evidence of what would be available to him there, or what financial and other support he could expect from the state.

66. The respondent has no children in the United Kingdom nor is it submitted that he has established a family life here; he has no partner, and no longer lives with his parents.

67. We bear in mind also that the respondent represents a genuine, present and sufficiently serious threat to the fundamental interests of society. He represents a serious risk to society, and significant weight must be attached to that. We have found also that the respondent has broken the integrative links he had with this country. While we attach some weight to the lack of ties he has with the country of nationality, and lack of facility in the language, we bear in mind his young age, and the finding that he could acquire a better command of Romanian. We bear in mind that the respondent has few, if any, economic ties to the United Kingdom, and very limited family ties. Some weight we do attach to his rehabilitation prospects which are may be less likely in Romania, but overall, we find that the Secretary of State has satisfied us that his deportation is proportionate in all the circumstances, given the seriousness of the risk he presents.

68. Accordingly, we dismiss the appeal under the EEA Regulations.

Anonymity

69. We have considered whether it would be in the interests of justice to make an anonymity order in this case as requested by Mr Briddock.

70. The starting point is the principle of open justice; Exceptions to that rule must be justified by some more important principle, most often where the circumstances are such that that openness would put at risk the achievement of justice which is the very purpose of the proceedings. Here, we are concerned not with a protection claim, and much of what we say in this decision is a matter of public record; the decision of the Court of Appeal was not anonymised. While we accept that some of what we say relates to the respondent's childhood, we are not satisfied, looking at all the appeal as a whole, that the interests of justice in this case require anonymity.

Summary of Conclusions

1. The decision of the First-tier Tribunal involved the making of an error of law and we set it aside.

2. We remake the appeal by dismissing the appeal on EU grounds.

Signed Date 30 July 2020

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul