



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DA/00034/2020

THE IMMIGRATION ACTS

Heard at Manchester (via Microsoft Teams)  
On 13 July 2021

Decision & Reasons Promulgated  
On 12 August 2021

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

CZER ION

(Anonymity direction not made)

Respondent

**Representation:**

For the Appellant: Mr A McVeety Senior Home Office Presenting Officer.

For the Respondent: No appearance.

DECISION AND REASONS

1. The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Bunting (the Judge) promulgated on 12 November 2020, in which the Judge allowed Mr Ion's appeal against the order for his deportation from the United Kingdom.
2. Mr Ion is a citizen of Romania, born on 8 December 1988, who the Judge found was only entitled to the lower level of protection.

3. The Judge sets out details of Mr Ion's criminal behaviour at [5] and the basis of the decision to deport him from the United Kingdom is set out in the decision to make a deportation order in the following terms:
  12. You have committed serious criminal offences in the United Kingdom and, as explained above, there is a real risk that you may reoffend in the future. You have not made any representations but we have considered the evidence available. For the reasons set out above, and in particular the genuine, present and sufficiently serious threat you pose to one of the fundamental interests of United Kingdom society, it is considered that your deportation is justified on grounds of public policy in accordance with regulation 23(6)(b). Your personal circumstances have been considered. To the extent they are known that our view is that, given the threat you pose, the decision to deport you is proportionate and in accordance with the principles of regulations, 27 (5) and (6).
4. Mr Ion neither responded to the Secretary of State's notice of intended deportation, which invited him to make any further representations, nor attend before the Judge who noted that Mr Ion had in fact left the United Kingdom on 16 June 2021 on a flight to Bucharest with no evidence that he had returned.
5. Mr Ion has failed to attend this appeal hearing. Notice of proceedings giving a clear indication of the date, time and venue of the hearing was sent to Mr Ion at the last known address, being that provided as his address when he was granted bail by the Secretary of State. No alternative address for service has been provided. In light of the lawful service of the notice of hearing, no application for an adjournment, and confirmation from Mr McVeety that no application had been made by Mr Ion to re-enter the United Kingdom which will be required in light of the abolition of the free movement provisions, I find it is appropriate and in accordance with the interests of justice and the overriding objectives to proceed with the appeal in his absence.
6. Permission to appeal was granted by another judge of the First-tier Tribunal. The operative part of the grant being in the following terms:
  2. The grounds assert that the Judge erred in the assessment of the risk that the Appellant presented against the findings of his criminal record, the nature of the Appellant's offending, and his leaving the UK without informing the Home Office.
  3. In accepting that the Secretary of State has shown that there was a risk of reoffending, paragraph 75, when combined with the assessment of the seriousness, paragraph 70, and the repeated disregard of the sentences, paragraph 73, it is arguable that the Judge erred in the assessment of the risk that the Appellant presented having regard to the Appellant's driving whilst disqualified and his failure to provide a specimen for analysis.
  4. The grounds are arguable and permission to appeal is granted.

### **Error of law**

7. As noted above, it was accepted by the Judge that Mr Ion's driving offences are serious, that he had showed a disregard for the law, and that the Secretary of State had established that was a clear likelihood of Mr Ion reoffending in the future.
8. The key finding of the Judge was that threat was not a sufficiently serious one, with no evidence that his offending has created a risk of harm [74] and

[76] which contradicts the findings at [71] in which the Judge writes: *"I agree with Mr Ojo that there could be serious consequences if the appellant were to drive without insurance and get into an accident. It is no answer that the person who suffered as a result will be able to turn to the Motor Insurance Bureau for recompense, as that is funded by the public itself."*

9. There was clear evidence before the Judge to show Mr Ion is a persistent offender who has shown a blatant disregard for the laws of the UK and who had provided no evidence, as recognised by the Judge, to explain his actions or to indicate there was no likelihood of a repetition of such conduct in the future. Little evidence of remorse was found by the Judge, and nor is it found that Mr Ion is integrated into the UK.
10. There is merit in the Secretary of State's argument that given the other findings made, the available evidence and considering the matter holistically, including the consequences for individuals driving with no insurance and without permission to do so as a result of their having been disqualified, indicating an inability to drive to the requisite minimum standards until they can prove otherwise, that the Judge has erred in law in a manner material to the decision to allow the appeal when finding that the offences of which there is a real risk that Mr Ion will repeat will not create a real risk of harm to others. There was no authority referred to by the Judge to support a contention that driving offences of the nature of those committed by Mr Ion, which warranted a custodial sentence, did not create a real risk of harm to others. The sanctions available to the criminal courts clearly indicate otherwise.
11. I set the decision of the Judge aside.
12. In light of the failure of Mr Ion to engage in the appeal process it is appropriate in all the circumstances for the Upper Tribunal to proceed to remake the decision without a further hearing.
13. The Judge's finding in relation to there being little evidence of remorse and repetition of offending at [55], that there is no evidence of rehabilitation at [56], that Mr Ion is a persistent offender at [60], that the driving offences were serious [70] with possible serious consequences [71], that Mr Ion was likely to reoffend [75], and that Mr Ion is not integrated into the UK [84] shall be preserved findings.
14. I find that it has been established that in light of the nature and frequency of the offending Mr Ion presents genuine, present a sufficiently serious threat to the interests of public policy in the United Kingdom.
15. The basic protection regime: Under the Immigration (European Economic Area) Regulations 2016 ('the 2016 Regulations') the provisions relating to European nationals who had not yet acquired permanent residence in the UK are to be found in Regulation 27(5). Regulation 27 as a whole reads:

**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 a right of permanent residence under regulation 15 and who 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 20<sup>th</sup> 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) 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 or is not a disease listed in Schedule 1 to the Health Protection (Notification) Regulations 2010; or
  - (b) if the person concerned is in the United Kingdom, any disease occurring after the three month period beginning on the date on which the person arrived in the United Kingdom,
- does not constitute grounds for the decision.
- (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.).

16. I have also had regard to the relevant provisions of the Immigration (EEA) Regulations 2016, Schedule 1 which states:

*SCHEDULE 1 CONSIDERATIONS OF PUBLIC POLICY, PUBLIC SECURITY AND THE FUNDAMENTAL INTERESTS OF SOCIETY ETC.*

**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 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.

17. I find the Secretary of State has established Mr Ion's conduct represents a genuine, present and sufficiently serious threat.

18. If an individual's conduct is found to represent 'a genuine, present and sufficiently serious threat', as it has in this case, it necessary to consider whether the other potential protections set out in the regulations should militate against deportation: MC (Essa principles recast) Portugal[2015] UKUT 520 (IAC). This requires a court or tribunal to ask whether the decision is 'proportionate' under 27(5)(a), which requires consideration of the factors under the new Regulation 27(6) which reads:

*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*

19. When considering the prospects of rehabilitation of European offenders, the following matters are relevant:

*family ties and responsibilities, accommodation, education, training, employment, active membership of a community and the like...However, lack of access to a Probation Officer or equivalent in the other Member State should not, in general, preclude deportation*

20. There is nothing from Mr Ion to show his prospects of rehabilitation will be more successful in the UK than Romania and in fact may be more successful in preventing further lack of insurance offences for in Romanian car insurance, "asigurarea auto", is obtained on a car by its owner and once the car is under a policy, the policy covers all drivers, rather than the need to insure the individual as per the UK legal requirement.

21. Consideration has been given to what is known regarding Mr Ion, but it has not been shown that his removal will be disproportionate to any interference in his right of free movement. I find the Secretary of State has established that it is lawful in all the circumstances for Mr Ion to be deported from the United Kingdom in light of the need to maintain public order, prevent social harm, maintain public confidence in the ability of the relevant authorities to take action, to tackle offences likely to cause harm to society, to combat the effect of persistent offending, and to protect the public.

**Decision**

**22. The Judge materially erred in law. I set the decision aside. I substitute a decision to dismiss the appeal.**

Anonymity.

23. The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....

Upper Tribunal Judge Hanson

Dated 14 July 2021