Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: UI-2021-000822**
EA/50039/2020; IA/00226/2020

THE IMMIGRATION ACTS

Heard at Field House
On the 17 August 2022

Decision & Reasons Promulgated
On the 11 October 2022

Before

UPPER TRIBUNAL JUDGE PITT

Between

TERCA MUNTEAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Smith, Counsel, instructed by Birnberg Peirce Limited
For the Respondent: Ms Ahmed, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision issued on 30 September 2021 of First-tier Tribunal Judge Thapar, which refused the appeal brought on Immigration (European Economic Area) Regulations 2016 grounds and Article 8 ECHR grounds in the context of a deportation order made on 30 June 2020.

2. I will deal with this matter relatively briefly where the grounds were clear and the error of law appeared to me to be equally clear.

3. The appellant is a citizen of Romania, born on 17 March 1987. She and her family travelled to Ireland in approximately 2007. They travelled to the UK

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in approximately 2010. The appellant has a number of convictions, culminating with the index offence for which, on 19 September 2019, she was sentenced to one year and two months in prison. In the main, the appellant's offences can be categorised as relating to theft.

4. The core of this appeal concerned the fact that the appellant has four children whose best interests and status in the event of deportation had to be assessed. The three older children were qualifying children as they had been resident in the UK for 7 years and the appellant's fourth child is a British citizen.

5. In support of the appeal the appellant relied on an independent social work report of Ms Christine Brown. Ms Brown states in paragraph 5.14 of her decision that deportation would be "highly detrimental" to the children, particularly the older children given their particular ages. At paragraph 5.16 Ms Brown expresses the view that the children will be in difficulty if they have to deal with outside agencies for assistance in the event of the appellant's deportation. She stated that although in the past external support of that kind was not needed whilst the appellant was in prison it would be much more likely to be required in future where deportation was permanent as against the limited period of the appellant being in prison. Ms Brown addresses this issue also in paragraph 5.5 of her report. In paragraph 5.18 of her report Ms Brown refers to the appellant's deportation being more than just undesirable but "devastating and catastrophic" for the children.

6. The First-tier Tribunal decision records in paragraph 9 the fact of there being a report and oral evidence from Ms Brown. Ms Brown's evidence is not set out and there is only a brief reference to her evidence in paragraphs 33 and 34. Paragraph 34 states:

> "I find Ms Brown's report does not identify any circumstances of the children which would indicate that the degree of harshness faced by the family goes beyond that which is ordinarily expected by the deportation of a parent."

This conclusion makes no references to Ms Brown's view that deportation would be "highly detrimental" and "devastating and catastrophic" for the children. Ms Brown gave evidence which was capable of being taken as showing that deportation would be unduly harsh for the children of the family but the decision does not refer to it at all or explain why it did not attract any weight.

7. The judge comments in paragraph 34 on the likelihood of the children needing support from external agencies in the future when they did not need it in the past and found that:

> " have nothing before me to suggest that the children have sought or received support from external agencies over the last four occasions that the Appellant has served a custodial sentence."

That is a correct statement but nothing in the decision shows that the judge went on to assess Ms Brown's evidence that this situation would be different in future or indicate why that opinion was not accepted.

8. Further, as indicated in paragraph 9 of the decision the judge also had before her evidence of the appellant's husband and of a family friend, Mr Margiocchi. They gave written and oral evidence on the same issues addressed by Ms Brown, that is, the difficulties for the children in the event of the appellant's deportation. Their evidence added potentially material weight to the argument that deportation would be unduly harsh for the children. Again, the judge does not record any of their oral evidence and does not provide any indication of the weight that attached to their evidence or why it was not accepted. The judge refers in paragraph 38 to Mr Margiocchi giving evidence that was "supporting" but does not set out in what way that was so and what weight, if any, she attached to his evidence and her reasons for so doing.

9. Further, as indicated above, the judge referred in paragraph 34 to the children facing only an "ordinary degree" of harshness. In paragraph 39 the judge also says:

> "I have found there to be no circumstances which would exist should the children return with the Appellant or if the Appellant was to return on her own which would be different from the general effect of deportation upon the Appellant's husband and her children."

As the grounds point out, the decision sets out no statute or case law relating to Article 8 ECHR. There is no explanation of the judge's understanding of the case of <u>HA (Iraq) v SSHD</u> [2020] EWCA Civ 1176 where the Court of Appeal set out, as confirmed by the Supreme Court, that there is no baseline or ordinary level of harshness. It is my view that the statements set out here make it unclear that the judge followed the correct guidance for assessing whether deportation would be unduly harsh for the children of the family.

10. For these reasons, therefore, it is my view that the decision of the First-tier Tribunal discloses a material error on a point of law concerning a proper assessment of the material evidence and in the application of the correct legal test for undue harshness. I therefore I set the decision aside to be remade.

11. After canvassing the views of the parties as to disposal in the event of an error of law, it is my view that the core findings of fact under Article 8 ECHR must be remade and that it is therefore appropriate that the appeal should be remitted to the First-tier Tribunal.

Notice of Decision

12. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be remade.

13. The appeal will be remade in the First-tier Tribunal.

Signed: S Pitt Date: 2 September 2022

Upper Tribunal Judge Pitt