IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003870

First-tier Tribunal No: DA/00044/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

3rd January 2024

Before

UPPER TRIBUNAL JUDGE PITT

Between

ALEXANDRU LUPU
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Gazzain, Counsel instructed by Queens Court Law
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard at Field House on 16 October 2023

DECISION AND REASONS

1. This decision is the re-making of the appellant's appeal against the respondent's decision dated 12 February 2020 to issue a deportation order under the Immigration (European Economic Area) Regulations 2016 (the EEA Regulations) and a supplementary decision letter dated 27 June 2022 confirming the deportation order and refusing the appellant's human rights claim brought on the basis of his private and family life under Article 8 ECHR.

2. The remaking is required following my decision issued on 22 September 2023 which found an error of law in the decision of First-tier Tribunal issued on 11 August 2022 and set the First-tier Tribunal decision aside to be remade.

Preliminary Issue

3. There was an application for anonymity. This was stated to be required in order to prevent the appellant's daughter being identified in connection with this matter. I heard oral submissions on this application, specifically on what serious harm would arise to the daughter from her name being used in this decision. Having heard from the parties, it was my conclusion that the appellant had not identified a level of harm arising to his daughter from the publication of this decision that could amount to "serious harm". The application was made on the basis of a generalised and speculative concern as to harm if anyone at the daughter's school learned of the facts of this case. The submissions did not detail what the harm would be and what level it might reach. Set against those matters, the public interest in open justice is high. In all the circumstances, it was my conclusion that it was not appropriate to make an anonymity order.

Background

4. The appellant was born on 23 December 1975 and is a national of Romania.

5. The appellant maintains that he came to the UK in 2008 but this has always been disputed by the respondent. There is an extant finding, summarised in paragraph 34 of the First-tier Tribunal decision, that the appellant has been resident and exercising Treaty rights in the UK from July 2010 onwards.

6. The appellant is married to Mrs Elena Goran. Mrs Goran was born on 1 July 1981 and is also a citizen of Romania. She came to the UK in 2015, met the appellant that year and began a relationship with him in 2016. The appellant and Mrs Goran married in August 2017. They have a daughter, also called Elena, born on 2 April 2017. Mrs Goran and Elena have settled status. Elena is eligible for British citizenship but an application has not yet been made.

7. On 21 June 2019 the appellant was sentenced to 8 years in prison after being convicted of conspiring with others to require another to perform forced labour and conspiring to convert criminal property.

8. On 12 February 2020 the respondent made a deportation order against the appellant. That was upheld in a further decision dated 27 June 2022 which also refused the appellant's human rights claim.

9. The appellant's appeal against the respondent's decisions came before the First-tier Tribunal on 8 August 2022. The appeal was refused in a decision issued on 11 August 2022. On 22 September 2023 I found an error of law in the First-tier Tribunal decision and set it aside to be remade.

Scope of the Remaking

10. The scope re-making is limited. The error identified in the decision of the First-tier Tribunal concerned a failure to permit oral evidence to be given by the respondent's wife. Her evidence has only ever addressed the appellant's private and family life and the family circumstances here and in Romania. In paragraphs 19 to 21 of my error of law decision I decided

that where there were extant findings on a number of independent aspects of the appeal, it was not appropriate to remit the matter to the First-tier Tribunal notwithstanding the fact that a procedural error had been identified. My reasons for this were as follows:

> "19. I considered whether the appeal should be remitted to the First-tier Tribunal where there has been a finding of procedural unfairness. When making that assessment I referred to AEB v Secretary of State for the Home Department [2022] EWCA Civ 1512 and Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC). I noted the guidance of the Court of Appeal in paragraphs 16 and 17 of AEB that if an appellant has been deprived of a fair hearing then the normal assumption is for the appeal to go back to the First-tier Tribunal to be remade.
>
> 20. I also considered the decision of the First-tier Tribunal as a whole and the witness statement of Ms Goran dated 3 August 2022. Ms Goran's witness statement only addressed family life issues. It is also clear that not all of the findings of the First-tier Tribunal were infected by the unfairness in Ms Goran being unable to give evidence on the family's circumstances. There was no challenge to the finding of the First-tier Tribunal that the appellant was resident and exercising Treaty rights from 2010 but was not integrated (paragraphs 23 to 34) and was therefore entitled only to 'serious' grounds of protection (paragraphs 50 to 53). The findings on the appellant's criminal offending also stand unchallenged (paragraphs 35 to 40). The decision that the respondent has shown that the appellant represents the requisite level of risk that requires the appellant to be removed from the UK also stands (paragraphs 54 and 55). Nothing indicates that Ms Goran's oral evidence could assist in those regards. The grounds, beyond the allegation of contradiction in ground 2, do not refer to any part of the decision being tainted beyond the family life findings.
>
> 21. It appeared to me, therefore, that this was a case where it was appropriate to deviate from the normal assumption that the appeal should be remade in the First-tier Tribunal. There are unchallenged extant findings and the procedural error was limited to one part of the case and did not taint the extant findings identified above. For these reasons, therefore, it was my conclusion that the appeal should be remade in the Upper Tribunal".

11. This aspect of the error of law decision was not disputed by the parties before me. On the contrary, it initially appeared that Mr Gazzain considered that the terms of the error of law decision meant that the remaking was limited to an Article 8 ECHR appeal, as set out in his skeleton argument dated 9 October 2023.

12. After canvassing this issue with the parties, agreement was reached that there remained an outstanding appeal under the EEA Regulations but that it was limited to an assessment of the proportionality of the appellant's deportation where there were extant findings from the First-tier Tribunal as to his lack of integration, his entitlement to "serious" protection and that he represented the requisite "serious" level of risk for the respondent to seek to remove him from the UK.

13. The appeal before me therefore proceeded on the basis that only the assessment of the proportionality of the decision under the EEA Regulations required remaking. This assessment required the application of Regulation 27 and paragraphs 1 to 7 of Schedule 1 to the EEA Regulations. Of particular relevance, Regulation 27 (5) and (6) provide:

> "**Decisions taken on grounds of public policy, public security and public health**
>
> 27. ...
>
> (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."

14. The parties were in agreement that where I did not find for the appellant under the EEA Regulations, I should proceed to conduct an Article 8 ECHR assessment with reference to Section 117C of the Nationality, Immigration and Asylum Act 2002.

<u>Proportionality of Deportation under the EEA Regulations</u>

15. Following the provisions of Regulation 27(6) of the EEA Regulations I must take into account, amongst other matters, the age, state of health, family and economic situation of the appellant, his length of residence in the UK,

his social and cultural integration into the UK and the extent of his links with Romania.

Age and health

16. The appellant is 47 years old. There is no evidence suggesting that he has health problems other than suffering from asthma which was not stated to be serious. Mrs Goran's statement referred to her having anaemia and high blood pressure this but when asked about this in oral evidence she stated that she did not have these problems. She gave oral evidence of having experienced depression when the appellant was sent to prison and receiving some form of counselling or therapy for this through her GP.

Family and Economic Situation

17. The appellant is living in the UK with his wife and daughter. He has relatives here, including seven brothers and their families. The family's economic situation is difficult as the appellant cannot work and Mrs Goran works part-time and claims child benefit and Universal Credit to support the family. The evidence showed that whilst the appellant was in prison, Mrs Goran had acute financial problems and needed assistance from family members and her church to support herself and her daughter.

18. I considered whether the circumstances of the family were such that it would be disproportionate for the appellant to go to Romania, leaving Mrs Goran and Elena in the UK. The appellant relied on an independent social work report from Ms Thelma Fossung dated 6 August 2022. The report was prepared whilst the appellant was still in prison and so did not comment on the family's circumstances since he was released and is of somewhat limited assistance as a result. The report identifies that the appellant lived with his wife and Elena until Elena was 18 months old. The report indicates that she spoke to him on the telephone whilst he was in prison, being unable to visit due to the Covid pandemic. The report indicates in paragraph 20 that during the period that the appellant was in prison, Elena was described by her teachers as "happy, friendly, kind, caring, shows compassion, forms good relationships, but she can sometimes be shy."

19. The social work report indicated in paragraph 21 that for the period of her life up until August 2022, Elena's home life had been conducted in the Romanian language but that her mother was beginning to try to communicate with her in English to support her English language development. At the hearing before me the appellant and his wife indicated that English was now her main language but that she understands some Romanian. The report identifies that research on children separated from their father can showed that this can cause disruption in the relationship with that parent and makes it more likely that the child will have behavioural and mental health issues.

20. Ms Fossung indicated in paragraph 31 of the report:

> "31. If Elena remained in the United Kingdom, removing Mr Lupu from the United Kingdom will separate her from her father, with whom she has

developed an established relationship. It will take away her stability and sense of belonging. Elena has already suffered with separation and loss of her father being away in prison. It is likely to affect her mental health by making her more anxious and possibly develop a fear of forming significant secure attachments to men in the future, based on her childhood experience of being separated from her father".

21. The report identifies at paragraph 37 that the appellant's deportation to Romania whilst his wife and child remained in the UK:

> " ... would be another loss and separation for the child, who has established a solid and affectionate relationship with her father. This is a great source of stress for the family, who do not wish to be separated".

22. The witness statements of the appellant and his wife prepared for this hearing maintained that there was strong family life, additionally so since the appellant was released from detention in October 2022. The appellant's statement dated 6 October 2023 maintains that he plays an important in Elena's life. In paragraph 6 of the statement the appellant indicates that he does not wish the family to be separated again. He refers to his daughter being unwell and settling badly into nursery whilst he was in prison and also when she started school. It was not clear whether this was as a result of separation from him or the understandable stresses that arise from such occasions. This statement contrasted with the evidence in Ms Fossung's report that Elena's school considered her to be a happy and friendly child so any earlier difficulties at nursery appear to have resolved.

23. The appellant maintained in paragraph 7 of the witness statement that "I form an integral part of Elena and my wife's lives". At paragraph 8 the appellant maintains that:

> "I have a close bond with my daughter Elena and play an important role in her life. She is very close to me and although very young when I went to prison, she is now at an age where she would really miss my absence if I was separated from my family again".

Paragraph 8 of the witness statement goes on to indicate:

> "8. ... I drop and collect Elena from school on a daily basis. She attends West Ham Primary School. Sometimes my wife joins us but I cover this duty as far as possible in order to allow the opportunity for my wife to work and carry out other duties. I also attend various meetings at the school when the progress of the children is discussed. I have attended some parents evenings during the last six to seven months and will attend a meeting which is scheduled for the 18th October 2023.
>
> 9. I help with day to day family responsibilities including housework and duties involving our daughter including spending time taking her out to the park, swimming, seeing her friends. I would like to take her to places such as to the cinema but we can't afford it. I help take my daughter to after school activities every Wednesday and Thursday which include dancing, mathematics and arts. Elena is a happy, content six year old child who is thriving with the parenting of both parents. She is achieving well at school and it would definitely not be in her best interests if our family life was uprooted and I was forced to

return to Romania. Her main spoken and written language is English and that is reasonable given that she attends school and is at the key stages of her development".

24. The appellant also indicated in paragraph 10 of his witness statement:

> "10. Whilst I was in prison as Elena was getting older, she had developed a recognition that she did not have a father figure in her life and it is that void that I am hoping to avoid. I believe that if I was separated from my daughter for any lengthy period of time, she would be deeply unsettled and she is in the formative years of her childhood and I believe this would have a significant impact on her future. At present our finances are very tough. My wife is reliant upon an overdraft at the present time to survive. If I was able to work to ease these problems I would do so immediately. I cannot afford any further independent social worker's report to address the impact on my daughter if I was permanently away from her and my wife but I can say that I speak as a parent who deeply cares for his daughter's welfare and upbringing and who has caught up rapidly with the time I lost during my imprisonment".

25. At paragraph 13 of his witness statement the appellant maintained that Mrs Goran:

> "... would not be able to cope with looking after our daughter especially after school. She would not be able to afford childcare for our daughter after school. My wife would again fall into a situation of poverty and destitution and that is something I really hope to avoid as the head of the family".

26. Mrs Goran provided a witness statement dated 5 October 2023. She maintained in paragraph 4 that the appellant was "an amazing father" from the time that Elena was born. He was involved practically in her upbringing. She considered Elena to be "a daddy's girl and they have a very close bond". In paragraph 6 Mrs Goran describes the difficulties she had when her husband went to prison as at that time she could not support the family without benefits. She eventually managed to obtain financial support through universal credit and child benefit. In paragraph 7 of her statement she refers to practical support from the Romanian Orthodox church who came to check on her and gave her money for food and toys. For a period the family became homeless but she then obtained accommodation through the local authority. She also refers to being supported by the universal credit team who assisted her to do an English language course and that when her daughter began school she was able to start working part-time. In paragraph 9 of her statement she indicates that being a single mother supporting a daughter was difficult and that she "struggled a lot".

27. At paragraph 10 Mrs Goran identified difficulties that her daughter had when separated from her father because of his imprisonment. Elena would ask her about her father and why he was not there. She indicated that when the appellant was released Elena was "over the moon" and indicated that "they have a strong bond and Alexandru did his best to catch up on lost time". She described how she and her husband worked together to have a good family life. Mrs Goran indicated in paragraph 13 of

the statement that she did not think that she could survive her husband having to leave the UK and considered that the marriage would break down if that was so. It would not be possible to visit him due to the lack of finance. She considered that Elena:

> "... would be mentally and emotionally affected if her father was taken away, she is old enough to feel the impact now".

She continues in paragraph 13:

> "If her father is removed from the UK this would be a huge blow to her and I feel her development and progress would be affected as she has already missed her father during the time he was in prison".

28. Mrs Goran was asked what she would do if the appellant were deported to Romania. She stated that she did not know and hoped that this would not happen.

29. I considered all of this evidence in order to asses the impact of the appellant returning to Romania without his wife and child. I accept that there would be hardship for all of them in that event. The emotional ties between the appellant and his family are strong and could not be replicated by indirect contact. . I accept that the appellant has formed a strong relationship with Elena since he came out of prison a year ago, taking on additional responsibility for her as Mrs Goran works. Both Mrs Goran and Elena would experience significant distress if the appellant were to be deported. Mrs Goran would become a single parent again and it is understandable that this is a great concern to her and the appellant given her difficulties in the past and inevitable hardships this would bring now.

30. I noted, however, that the evidence indicated that Mrs Goran is somewhat better placed now to cope than when the appellant went to prison. She is now able to work while Elena is at school, has found employment and sorted out access to welfare benefits. She can expect the same support from her church and the appellant's family that she had when the appellant was in prison. The appellant confirmed that his family in the UK have continued to provide financial and practical support to him and his wife since he was released from prison. She and the appellant both confirmed in their oral evidence that his family in the UK continued to provide some practical and financial support.

31. My conclusion was that the appellant's deportation would have serious impact on all members of the family who would all suffer emotionally. Elena's would be particularly adversely affected as she would be losing an important parental figure and her age means she is less able to cope with this adversity than her mother. Notwithstanding those findings, when assessed together with the other factors that have to be taken into account, it was not my conclusion that the difficulties that the family will face if the appellant goes to Romania alone were sufficient to make the decision to deport disproportionate.

<u>Length of residence and social and cultural integration</u>

32. The appellant has been resident in the UK since 2010, so for 13 years. I accept that this is a long period of time but it is not, in my view, significant given that the appellant living for all of his formative years and until the age of 35 in Romania. The finding of the First-tier Tribunal found in 2022 that the appellant had not become socially and culturally integrated is extant. The evidence before me still indicated that he has remained within the Romanian community to a significant extent, his brothers being here and the family being involved with and receiving support from the Romania Orthodox church.

33. It was submitted for the appellant that he had become socially and culturally integrated in the year since his release from prison. The evidence still indicated that he was mainly involved with his immediate and wider Romanian family and the Romanian Orthodox church rather than British society and culture. My conclusion was that the appellant had limited ties to the UK notwithstanding the amount of time that he has lived here.

Extent of the appellant's links with Romania

34. In addition to the finding above that the appellant has strong links with the Romanian community in the UK, the appellant and his wife both confirmed that his mother remains in Romania where she lives in a house owned by one of his brothers. His brother's family live in the home with his mother and his brother comes to the UK on and off for periods of work and then returns to live in Romania. Further, the appellant and Mrs Goran confirmed that Mrs Goran's father lives in Romania and owns his home. Mrs Goran also indicated in her oral evidence that the appellant has two sisters in Romania.

35. The appellant and his wife maintained that it would be extremely difficult for them to return to Romania. I did not accept that evidence. As above, they have close relatives there who own property and nothing indicated that they could not be accommodated on return, certainly with Mrs Goran's father, the evidence on whether there was sufficient room in his mother's home being less clear. Mrs Goran was asked why the family could not live with her father and she and the appellant look for work. She responded only that it was possible that her father would need her help and she would need to work to support the family. I did not find that this or any other part of the evidence provided any substantive reason why the family could not live with Mrs Goran's father and look for work to support themselves. Further, the evidence was that both the appellant and his wife worked in Romania before coming to the UK. Even taking into account the less advantageous economic situation in Romania, they can be expected to look for work again on return. Further, the appellant and Mrs Goran both confirmed that the appellant's family in the UK continue to assist them sometimes with finances and nothing suggested that this could not continue if they return to Romania.

36. Mrs Goran has been in the UK only since 2015, a period of 8 years, and can also be expected to return to live as an insider in Romania, as can the appellant. I accept that the appellant's daughter has only been to

Romania once as a small child but the evidence indicated that she has contact with her relatives in Romania through social media, that she attends the Romanian Orthodox Church and that she understands Romanian. Clearly there will be a significant disruption for her to go to a different country and recommence her education within a different system in a different language. She would be doing so whilst remaining with her Romanian parents and within a wider Romanian family, however. It was my conclusion that her involvement with the Romanian community in London and Romania culture, the support she would have from her parents and relatives in Romania and her age meant that she would be able to integrate without significant difficulty. That remained my view even after taking into account that Elena and her mother have settled status and that Elena would be entitled to British nationality were she to make an application.

Criminal Offence

37. Following Regulation 27(5)(e) the appellant's criminal conviction does not in itself justify deportation but it is a factor to be weighed as part of the proportionality assessment.

38. The appellant pleaded not guilty in the Crown Court but was found guilty by a jury. He was sentenced on 21 June 2019. The decision of the First-tier Tribunal at paragraphs 36-38 contains an accurate summary of the sentencing remarks:

> "36. The conspiracy lasted from July 2015 until October 2018 and involved forcing Romanians, who had been transported to the United Kingdom by the appellant's co-defendants, to work as labourers in construction or other employment in the United Kingdom. The victims were targeted having suffered hardship in Romania and were promised decent wages and living conditions in the United Kingdom. Instead they were housed 10-30 in a room lined with mattresses sometimes infested with rats and cockroaches. Their identity cards were taken from them and their money controlled by the appellant and his co-defendants who retained their bankcards and access to their bank accounts. The victims would not be allowed out of the house except at specific times and only allowed to go a short distance from the house. They were drip-fed small amounts of money but full wages were kept from them. The conditions in which they lived were terrible, they were denied the ability to clean themselves and lived in horrendous overcrowding. The food provided was inconsistent with little regard for the victim's health. They were paid wages of roughly £1.80 per hour after the appellant and his co-defendants had taken their cut. They were subjected to violence, often in the presence of others sometimes in response to a victim complaining he couldn't do more work.
>
> 37. The Judge said that the appellant's specific role involved him registering businesses that provided labour, and leasing houses that accommodated the victims. The Judge said that whilst there was no evidence from victims who were housed in the appellant's house, the appellant was as a conspirator aware of the overall criminal plan and the violent ends to which his co-defendants would have gone to achieve it. The appellant's address was found to contain hundreds of records for worker's bank accounts and tax affairs indicating, the Judge

> said, that the appellant was controlling those people affairs for his own profit having exploited the workers. The appellant received £400,000 in income from the exploited victims wages and £45,000 from a co-defendant. The Judge concluded the appellant was a stakeholder in a conspiracy and in the business of exploiting people. It was on this basis the appellant was sentenced to eight years of imprisonment.
>
> 38. The appellant was first remanded in custody and charged with his offences in late October 2018 and has remained in custody since. His earliest date of release from custody is October 2022. No evidence has been adduced about the appellant's time in prison though he said to me he has not faced any sanctions but has been given an 'enhanced prisoner' status."

39. The Sentencing Judge also commented "It is the lack of humanity demonstrated to a fellow person and a complete lack of empathy for them that I am afraid to say disgusts me and, indeed society'. The Judge also stated that the offence was committed 'for just one thing, and that is money – in other words greed.'

40. Paragraph 55 of the decision of the First-tier Tribunal shows that as of August 2022 the appellant continued to maintain that he did not commit the offence and that he had been the victim of a miscarriage of justice. That was also the case in the appellant's witness statement dated 6 October 2023. He states in paragraph 3 that he has always conducted himself legally in the UK. He indicates at the end of paragraph 3 that "I have never and will never seek to benefit in any way from any criminal activity or the proceeds of crime."

41. The appellant indicated in paragraph 6 of the statement that he had a "huge sense of remorse and guilt" but this was concerning his absence from the family home during his imprisonment. The appellant went on in paragraph 6:

> " ... I wish to state very clearly that I am extremely sorry for the conviction that resulted in my imprisonment and the separation from my family. This is a conviction which destroyed my family and my future. Under no circumstances would I wish to face anything which would cause my future to be in jeopardy again".

42. In paragraph 7 of the witness statement the appellant indicated "I respect that the circumstances relating to my criminal conviction are part of my history." The appellant stated in paragraph 12 of the statement that his involvement with the Romanian Orthodox Church "has taught me to accept that despite pleading not guilty, I was found guilty in respect of my conviction". In paragraph 16 of the witness statement the appellant indicates that he has no intention of committing any future offences because of the importance that he places on his settled family life.

43. In cross-examination, Ms Cunha put it to the appellant repeatedly that his evidence indicated that he accepted that he had been found guilty but did not accept that he was, in fact, guilty and that he did not take responsibility for his offending. The appellant's responses indicated that he accepted that he had been convicted and that there had been exploitation for financial gain but did not accept that had been responsible or that he

was truly guilty. He stated, for example, “I am very sorry that I was involved in this case”. He also stated “I can say I have been involved in this matter but it wasn’t exploiting other people, it wasn’t what I wanted to do or what I did.” He was asked specifically whether he still maintained that he was not guilty and responded “I only want to say that I am very sorry that I was involved in this matter.”

44. The appellant was asked whether he felt remorse for the actions that led to his conviction. He responded “Yes, because I was involved in that matter”. It was put to the appellant that even after spending 4 years in prison he did not accept responsibility and he replied “So after spending 4 years in prison I accept that as well – the responsibility”. He was asked to clarify this statement, Ms Cunha asking “Do you accept responsibility for being involved or responsibility for the crimes themselves?”. The appellant replied “I accept that I have been involved”. The appellant also stated in oral evidence that he pleaded not guilty because he thought that he was not guilty. He stated also that he did not take any money from the victims or from anyone. The appellant continued to state that he was sorry that he was “involved” in the case.

45. It appeared to me that the appellant’s evidence was that he had to accept that the businesses in which he was involved had exploited the victims and that this was led to his conviction but no more than that. He did not accept that he had, in fact, exploited others or committed the offence or intended to commit the offence. It was my view that the appellant’s lack of responsibility for the offence and real acceptance of his guilt was a significant factor which had to be taken into account in the assessment of whether it was proportionate for him to be deported. It indicated that deportation would not have a meaningful impact on rehabilitation given that the appellant’s prospects of rehabilitation in either the UK or Romania are limited as he does not accept responsibility for his offending. It also raised concerns as to reoffending where the appellant did not accept that he was responsible for his offending. It cannot be said that he has successfully reformed or rehabilitated where that is so, even taking into account his oral evidence as to requesting rehabilitation courses whilst in detention and being given enhanced status and work roles on the basis of good conduct.

Conclusion

46. Having taken into account the matters set out above, it was my conclusion that it was proportionate for the appellant to be deported under the EEA Regulations. The significant factor weighing in favour of the appellant is the difficulty his deportation would have on his wife and Elena if they remained in the UK without him and the difficulties Elena would face if she went to Romania with him. It was not my conclusion that these were matters sufficient to outweigh the factors in favour of deportation. There are reasonable options for the family to return to Romania together. If the appellant returns alone, he will still have access to accommodation, to emotional support from his relatives there and can be expected to work there as he did in the past. Mrs Goran and Elena will be left in difficult

circumstances without the appellant but will have some support from his family here. The appellant's view of his offending also weighs against him.

47. For all of these reasons I found that the decision to deport the appellant under the EEA Regulations was proportionate and that the appeal against deportation under those Regulations should be refused.

Article 8 ECHR

48. As the appellant's deportation under the EEA Regulations has been found to be lawful, an Article 8 ECHR assessment must be conducted.

49. That assessment had to be conducted in line with Section 117C of the Nationality, Immigration and Asylum Act 2002 which provides:

> "117C **Article 8: additional considerations in cases involving foreign criminals**
>
> (1) The deportation of foreign criminals is in the public interest.
>
> (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
>
> (3) In the case of a foreign criminal ('C') who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
>
> (4) Exception 1 applies where –
>
> (a) C has been lawfully resident in the United Kingdom for most of C's life,
>
> (b) C is socially and culturally integrated in the United Kingdom, and
>
> (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.
>
> (5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.
>
> (6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.
>
> (1) (7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted".

2. The appellant is a "serious" offender, that is, he received a sentence of over 4 years imprisonment. He therefore cannot succeed in this appeal even if he meets the provisions of Exceptions 1 and 2 of s.117C. Applying the learning of the Court of Appeal in NA (Pakistan) v Secretary of State for

the Home Department [2016] EWCA Civ 662, the correct approach is to identity whether the appellant could meet the provisions of Exceptions 1 and 2 and then proceed to include those findings when assessing whether there are very compelling circumstances.

50. I have set out the material evidence and my view of it in the assessment under the EEA Regulations above. It is my conclusion that the appellant cannot meet Exception 1 of Section 117C. He has not been lawfully resident in the UK for most of his life, having lived by far the majority of his life in Romania. He is not socially and culturally integrated because of the level of his involvement with the Romanian community here, his ties to Romania and his criminality. He has not shown himself to be socially and culturally integrated for the purposes of the EEA Regulations or s.117C(3)(b). He will clearly not face very significant obstacles to integration in Romania for the reasons set out above. He has lived in Romania for most of his life and well into adulthood. He has immediate family members there who can accommodate him, he has retained strong links with Romanian culture, can be expected to find work there as he did in the past and can be expected to reintegrate there without serious difficulty.

51. It is also my conclusion that the appellant cannot show that it would be unduly harsh for his partner or his child if he were to be deported to Romania alone or if the family were to return there together. The higher courts have provided guidance on the correct approach to an assessment of undue harshness. In HA(Iraq) v Secretary of State for the Home Department [2022] UKSC 22 the Supreme Court confirmed that there was no "baseline" notional comparator against which undue harshness should be evaluated. There were too many variables in the suggested baseline characteristics for any comparison to be workable. Such an approach would also be potentially inconsistent with the statutory duty to have regard to the "best interests" of a child. The Supreme Court confirmed that the correct approach is to follow the guidance in KO (Nigeria) v Secretary of State for the Home Department [2018] UKSC 53, which approved the direction in the Upper Tribunal case of MK (section 55 – Tribunal options) Sierra Leone [2015] UKUT 00223 (IAC). That direction said:

> "… unduly harsh does not equate with uncomfortable, inconvenient, undesirable or merely difficult. Rather, it poses a considerably more elevated threshold. 'Harsh' in this context, denotes something severe, or bleak. It is the antithesis of pleasant or comfortable. Furthermore, the addition of the adverb 'unduly' raises an already elevated standard still higher".

This test recognises both that the level of harshness which is "acceptable" or "justifiable" is elevated in the context of the public interest in the deportation of foreign criminals and that "unduly" raises that standard still higher. The task for the Tribunal is to make an evaluative judgment as to whether that elevated standard has been met on the facts and circumstances of the case.

52. My reasons for concluding that the appellant's wife and daughter will not face undue harshness are essentially set out above. The family can clearly be expected to return to Romania together without experiencing undue

hardship. The appellant and his wife have lived in Romania most of their lives, have worked there and have immediate family there who can accommodate them and provide practical support. I accept that there would be difficulties for Elena if she went to live in Romania. However, she would be returning with her parents who know the country well and to relatives who could also assist her to adapt. She understands Romanian and has experienced Romanian culture in the UK. The materials on the economic situation Romania did not support the claims of the appellant and his wife that they will be destitute if they return there and unable to find any kind of work. That claim also ignores the financial support that the family received in the past from relatives in the UK, which continues now and which they can expect to receive if needed on their return to Romania.

53. I also did not find that the appellant returning alone would lead to unduly harsh circumstances for Mrs Goran or Elena. I accept that living with both of her parents in the UK is clearly in Elena's best interests. It remains the case, as found above, her mother is in a better position to care for her now than when the appellant was imprisoned in 2018. There will be support from the appellant's relatives in the UK and the Romanian Orthodox church. Mrs Goran has managed to stabilise the family finances since Elena went to school and has found work and claimed her entitlement to benefits. It will be significantly more demanding for Mrs Goran as a single parent to support herself and Elena in the absence of the appellant but she will have some support and the evidence did not show that her difficulties amounted to the elevated level required for a finding of undue harshness. The emotional hardship of living apart from the appellant will be significant, especially for Elena, but the evidence did not show that she would be so badly impacted that it can be said that she would face undue harshness. The appellant has not shown that Exceptions 1 and 2 of s.117C are met.

54. Having found that the exceptions in s.117C are not met, I must consider whether when taken with other materials it can be found that there would be very compelling circumstances over and above those considered above in the event of deportation. I did not find that this was so. There are no further significant factors to be added to the appellant's side of the balance that could outweigh the public interest. Following s.117C, the public interest weighs particularly high here as his sentence was very significant and he has not accepted responsibility for his offending.

55. I therefore found that the respondent's decision to deport the appellant was a proportionate one under Article 8 ECHR. I therefore refuse the appeal under the ECHR.

Notice of Decision

56. The appeal under the EEA Regulations is refused.

The appeal under Article 8 ECHR is refused.

S Pitt
Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 December 2023