



First-tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number [Sensitive/Irrelevant]

THE IMMIGRATION ACTS

Heard at Taylor House
On [Sensitive/Irrelevant]

Decision and Reasons Promulgated
30 MAY 2018
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Before

FIRST-TIER TRIBUNAL JUDGE [Sensitive/Irrelevant]

Between

[D1914]
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: (Not represented)
For the Respondent: Ms M. Lambert

DECISION AND REASONS

1. The Appellant, who was born on [DPA] is a citizen of Romania who is present in this country. Under the terms of the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations") the Respondent made a deportation order with reference to section 5(1) of the Immigration Act 1971 ("the 1971 Act"). The order provided for the Appellant to be removed from this country to Romania.

2. The Appellant exercised his right of appeal against the decision under section 82 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). The appeal was exempt from the payment of an appeal fee.

THE APPELLANT'S IMMIGRATION HISTORY

3. The Respondent records that the Appellant claimed that he had resided in this country since 2009. Romania is of course a member state of both the European Union and the European Economic Area.

THE RESPONDENT'S DECISION TO DEPORT

4. The Appellant received seven convictions for eight separate offences in Romania, Germany and Italy between 20 March 1997 and 8 December 2008. The Appellant was served with notice of his liability to deportation on 31 March 2017. In response the Appellant made representations, which included issues relating to his health. However the deportation decision was made by the Respondent on 10 April 2017. The deportation order was signed and then served on the Appellant on 11 April 2017.

5. In a detailed reasons for decision to make a deportation order letter dated 10 April 2017 the Respondent refers to the criminal history of the Appellant and to the provisions within the EEA Regulations whereby the Respondent is entitled to deport an individual where the grounds are justified by way of public policy, public security or public health. The requirements of Regulation 27 of the EEA Regulations must be met. An individual who has a right to permanent residence may only be deported on serious grounds of public policy or public security and an individual who has resided for a continuous period of at least 10 years may only be deported on imperative grounds of public security.

6. The Respondent did not accept that the Appellant had been continuously resident in this country for a period of at least five years. It was however noted that the Appellant had claimed that he had been residing in the United Kingdom since 2009. The Respondent stated that appropriate evidence was taken into account. It was decided that the deportation was justified on grounds of public policy or public security. Additionally consideration had been given to the requirements of *sub*-Regulation 27(5) of the EEA Regulations.

7. The offences by which the Appellant had a criminal record included a conviction for [Sensitive/irrelevant] for which a [Sensitive/irrelevant] term of imprisonment had been imposed. The other offences and convictions are referred to at paragraph 27 of the reasons for decision letter.

8. Under the terms of the EEA Regulations it was not considered that the decision failed to comply with the principle of proportionality under the terms of the EEA Regulations.

9. It was noted that the Appellant had raised health issues. However it was not considered that the Appellant would be unable to obtain prescribed medicines and treatment in Romania, even if the standard of medical assistance provided was not the same as that available under the National Health Service in this country. Nevertheless such reasons would not be the basis for the Appellant to resist deportation.

10. It was noted that the Appellant had claimed that he resides with a fellow Romanian national in this country. The Respondent, without further information, found it reasonable to conclude that there was no evidence that the partner could not return to Romania with the Appellant or otherwise, if she were to remain in this country and exercise her EEA Regulation rights, they could not remain in contact after the return of the Appellant to Romania by way of mobile telephone and social media methods of communication. With respect to rehabilitation it was not found that the removal of the Appellant to Romania would affect his ability to continue rehabilitation.

11. The Respondent proceeded to consider Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 on the basis that the decision was to remove the Appellant as a direct consequence of the deportation order. It was considered that proportionality, if assessing issues outwith the Immigration Rules and the EEA Regulations, would involve consideration of Part 5A of the 2002 Act, which I refer to below. The deportation was found to be in the public interest and that the Appellant would not meet the requirements of either the Immigration Rules or of Part 5 of the 2002 Act to override the public interest in his deportation. Additionally, it was not found that there were very compelling circumstances which would otherwise entitle the Appellant to resist the deportation order based upon a direct consideration of Article 8 ECHR rights outwith the EEA Regulations or the Immigration Rules.

12. With respect to medical issues, it was not considered on the evidence brought forward by the Appellant that his circumstances would breach the threshold which would entitle him to resist deportation.

THE APPEAL

13. Further to the refusal decision the Appellant's representatives, Solicitors' Inn, served a Notice of Appeal dated 19 April 2017. By way of appeal grounds it is asserted that the Appellant had been exercising his European Treaty rights in this country and his medical condition was stressed, particularly with respect to heart difficulties. Additionally it was asserted that the Appellant had faced

proceedings brought by Romania in relation to three European arrest warrants issued there, requiring the return of the Appellant. However the High Court had found in favour of the Appellant in resisting that order. It was consequently asserted that removal of the Appellant would be disproportionate and the decision of the High Court was relied upon.

DOCUMENTATION

14. In addition to the documents to which I have referred, the bundle provided on behalf of the Respondent in accordance with standard Tribunal directions includes copies of all the deportation decision documentation and response submissions, including a copy of the deportation order dated 10 April 2017. Additionally provided was an extract from the Police National Crime Records confirming the foreign convictions between March 1997 and July 2008 (in Romania, Germany and Italy). There are no recorded convictions, cautions, warnings or reprimands against the Appellant which had been decided upon or administered in this country.

15. On behalf of the Appellant a bundle of documents containing information with respect to the Appellant's medical conditions has been provided, together with some HMRC documentation and an article by [Sensitive/Irrelevant] concerning the extradition appeal of the Appellant which was heard at the Royal Courts of Justice in London on 15 July 2016. Additionally provided (received on 16 June 2017), is a copy of the patient record of the Appellant, together with other documents relating to his residence, confirmation of his discharge from extradition proceedings by Westminster Magistrates' Court and further medical information. I obtained a copy of the judgment of the High Court in [D1914] and Baia Mare Local Court Romania [2016] [Sensitive/Irrelevant]

[Sensitive/Irrelevant]

THE APPELLANT'S ADJOURNMENT APPLICATION

16. As stated above, the Appellant is professionally represented. In that respect the Tribunal received by *facsimile* on 19 April 2016 two letters. The hearing of this appeal had been set for 20 April 2018. The facsimile letters were both therefore received the day before.

17. The representatives state in the earlier letter that they had been unable to obtain instructions from the Appellant. Indeed I note that the Appellant had requested an adjournment with respect to a hearing scheduled in October 2017. It is stated that the Appellant had failed to comply with various reminders. The only response of the Appellant throughout the process was a telephone call to indicate that he was not well and that he would attend at the office as soon as possible.

18. The representatives state that on 18 April 2018 they received a letter from the Appellant's GP which stated that he was very stressed and suffering from anxiety and insomnia. His *angina* was worsening and a specialist review was awaited.

19. The representatives provided a statement of fitness together with other information and an assertion that the Appellant had lost £400 by way of a theft, which had increased his anxiety. It was therefore requested that the appeal hearing be adjourned.

20. In the second letter dated 19 April 2018 the representatives, in addition to confirming a change of address for the Appellant from [DPA] to [DPA], stated that if an adjournment request was not successful, the appeal should be considered based on the documentation alone.

21. In considering the adjournment Ms Lambert remained neutral. However, taking into account the documentation presented I noted that a certificate issued by Leytonstone Road Medical Centre on 18 April 2018 confirmed that the Appellant was not fit to undertake work. However in the covering letter from the medical centre it is not stated that the Appellant would be unable to attend any court proceedings or that he would be unable to give appropriate instructions to legal representatives who could of course have attended Tribunal proceedings, with or without the Appellant. In the circumstances, and guided by the Upper Tribunal decision in *Nwaigwe* [2014] UKUT 418 (IAC) I did not find in the circumstances that refusing an adjournment application was unfair to the Appellant.

PROCEDURES FOR THE DETERMINATION OF THIS APPEAL

22. In the circumstances, having refused the adjournment, Ms Lambert, for the Respondent, chose to rely upon the terms of the deportation decision letter. She had no further remarks to add in terms of representations for the Respondent.

23. Ms Lambert, a Home Office Presenting Officer, accordingly appeared for the Respondent. As stated, there was no appearance by or on behalf of the Appellant. Proceedings were conducted in English.

24. At the conclusion of the appeal hearing I reserved my decision in this appeal.

THE LAW AND THE TRIBUNAL'S FINDINGS OF FACT

25. In this appeal the burden of proof rests with the Respondent. It is for this independent Tribunal to determine whether the decision by the Respondent

breached the terms of the EEA Regulations or otherwise unlawfully interfered with the engaged human rights of the Appellant or his family members.

26. I have referred above to the requirements of the EEA Regulations. The Respondent carefully considered those in the letter explaining her decision. Additionally human rights are relevant to this appeal and there are unusual circumstances in that respect which apply.

27. In this appeal I must take into account the findings and the conclusions of Lord Justice [Sensitive/Irrelevant] and Mr Justice [Sensitive/Irrelevant] in the High Court judgment in [D1914] (above). The High Court concluded that extradition to Romania would be a disproportionate interference with the Article 8 ECHR rights of the Appellant. In all the circumstances it would be incorrect for the proposed deportation of the Appellant to be found other than in parallel to the findings with respect to extradition. Notwithstanding the failure of the Appellant to attend the appeal hearing the reality is that Ms Lambert was not able to put forward any reasons why this Tribunal should take a different approach from the conclusions reached by the High Court in relation to the Appellant in terms of his human rights in relation to Article 8 ECHR.

CONCLUSIONS

28. For the reasons stated above it is found that the deportation of the Appellant would constitute a disproportionate interference with his engaged Article 8 ECHR rights. Accordingly the Respondent's decision amounts to a breach of her duties under section 6(1) of the 1998 Act and the Respondent cannot succeed in discharging her burden with respect to deportation under the EEA Regulations or the 1971 Act.

29. There was no application for the making of an anonymity order and there is no basis for such an order to be made.

Notice of Decision

The appeal is allowed.

No anonymity order is made.

Signature

30 April 2018

Judge [Sensitive/Irrelevant]

Judge of the First-tier Tribunal

TO THE RESPONDENT
FEE AWARD

As there was no fee paid or payable in this appeal no fee award can be made.

Signature

30 April 2018

Judge Sensitive/Irrelevant
Judge of the First-tier Tribunal