Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/06881/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 24th January 2019	**On 4th February 2019**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

S M A
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms E Rutherford, of Counsel, instructed by Cartwright King Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal comes before me following my decision of 25 September 2018 which set aside of the determination of First-tier Tribunal Judge Lodge dated 8 March 2018.

2. The appellant is a Romanian national born on 17 January 1978. His application for a registration certificate was refused by the respondent under regs 17, 24

and 27 (5)(a) and (6)(a) because he entered the UK in breach of a deportation order and it was considered that he posed a genuine, present and sufficiently serious threat to the fundamental interests of society.

3. The deportation order was made on 6 September 2005 following a conviction for assisting illegal immigration (in 2004), for which he received a one-year prison sentence on 1 March 2005. There is no further official information relating to the offence or conviction, but the appellant's evidence is that he was assisting his father who was travelling with him on a fake passport. No explanation has been offered for why his father had a fake passport and there is also no information as to whether any prosecution was brought against him. The appellant's evidence is that his father now lives in the UK, but I have no evidence as to his immigration status.

4. A further deportation order was issued on 21 March 2007 when the appellant attempted to re-enter the UK at Luton Airport and was refused entry. Thereafter he entered in breach of both deportation orders. In oral evidence to the First-tier Tribunal, he maintained he had re-entered twice; once in 2013 in a van via France and then again in 2015 via bus from Dublin. It should be noted that in his appeal form he only referred to entry in September 2015, although he maintains in his witness statement that that was a mistake. He appears to have previously been in the UK in 2002 when he was granted leave until 21 October 2003; extended, on 21 November 2003, to 21 October 2006.

5. Following his deportation in 2005, the appellant met and married his wife in Romania. According to the appellant's wife's statement, he then came here in 2013 and she followed with the children in December 2015. On 26 October 2016, he made an application for registration certificates for himself and his family. His wife and two children (born 18 September 2007 and 8 August 2006) were granted certificates on 19 July 2017, but his application was refused. It was his appeal against this decision which was heard by the First-tier Tribunal Judge Lodge in Birmingham on 2 March 2018 that gives rise to these proceedings.

6. The First-tier Tribunal's decision was set aside on the basis that the judge's proportionality assessment of the appellant's family circumstances, and specifically the best interests of his two daughters, was inadequate for the purposes of reg. 27(5).

7. The following findings were preserved: (1) that the appellant knowingly entered in breach of one or more deportation orders (2) that he deliberately failed to disclose his conviction on his application for a registration certificate.

8. The appeal then came before me for re-hearing on 24 January 2019.

The Hearing

9. The appellant and his wife attended the hearing. Both gave oral evidence. The appellant spoke through a Romanian interpreter and his wife gave evidence in English with the interpreter available in case of need.

10. The appellant confirmed the contents of his witness statement and stated that his removal from the UK would adversely affect his children. They did not want to return, nor did they want him to leave. It had been difficult when he had left them in Romania and come to the UK; he had not been around to offer them help with their education or to have any input as a father. He confirmed that he had been offered work by a company owned by his mother and brother.

11. In cross examination the appellant confirmed that his brother had registered the business in July 2018. They were currently working on a contract from Mears Housing. His position was still open as the company needed more workers. He had previously worked in the UK as a carpenter. His wife worked as a cleaner. She earned some £10,000 p.a. cleaning offices and homes. Apart from that they had help from friends and family, but he could not say how much. Nor did he know what they paid in bills. The rent was £920 per month. He did not keep count of money. They also received benefits and the costs of the rent was largely met by housing benefit leaving a shortfall of £200. He denied that he was working. He could not offer any explanation for why his wife and children did not accompany him in 2013, given the stated difficulties of separation. He did not agree that there had been a significant impact upon the children when they arrived here. He stated that most family members were here. He said that the children liked the school. They had support to communicate when they started. With respect to his older daughter's school results, he said his wife would know better. He did not recall any friends coming to their house in the first year. The children spoke Romanian and English. They would be 12 and 13 this year. The youngest was due to start secondary school the next academic year. He disagreed that they were not at a critical stage in their education.

12. The appellant was asked about family in Romania. He said he had cousins and an uncle there but had not been in touch with them whilst in Romania and there was no contact since he had come here. He did not keep in touch with friends as they were all here. The children did not wish to keep in touch with their friends after they came here. He said his brother was here with his daughters and they had friends here too. His wife's brother and mother lived in Romania although her mother was currently visiting them. She and the children were not that close. He had some land in Romania. It could be built on, but he did not use it for anything. He did not agree that there would be no great problems for the family on return to Romania. He said that it would be difficult for the children to adapt. That completed cross examination. There was no re-examination.

13. In response to my questions, the appellant stated that the children had attended pre-school in Romania from the age of 2 or 3 and school from around 6. His brother, his wife and their children were in the UK along with his mother, three cousins, one of whom had a family and a lot of friends. They were part of a large Romanian community. His father was also here.

14. I asked the appellant to describe an average day in his life. He said it was boring. He did nothing. He wanted to work. I asked about his role in the household. He stated that he washed clothes, cleaned and washed the dishes when required. His wife did the cooking. They shared the shopping. His wife took the children to school on her way to work. They came home walking, or his mother collected them, or he did. He said they went for walks together, went swimming and talked. He said he would stop claiming benefits if he was able to work but then admitted that he had been on benefits when working previously. His brother employed five people. The employment had been self-employed when he had last worked. Evidence had been adduced. Neither party had any questions arising from mine.

15. I then heard from the appellant's wife, FEA. She was able to give her evidence in English. She confirmed she was aware of the contents of her witness statement. She said that she had spoken to her eldest daughter about the situation and her daughter had said that if she was made to leave the UK it would mean that her mother did not care about her. She said that the children had grown up in Romania and had been all right there but since being here they were able to compare the situation and that they preferred being here. She, herself, would have to choose between staying here with her children or returning with her husband. She said remaining would not be a good situation as it would be difficult to manage on her own. She would have to work and care for the children. She said that her husband helped with cleaning and cooking at home. The children needed a father. They listened to him more than to her; perhaps that was because she was always at work. They needed their father.

16. In re-examination, FEA stated that they did not come with the appellant in 2013 because they did not have the money to do so and he had come here to organise things and to prepare for them. She agreed that it was difficult for them at first as they did not speak English and they had to use Google Translate, but they learnt fast and now spoke very well. They liked school and had made friends. They had initially kept in touch with friends in Romania, but they were young and lost contact after a while.

17. The witness said that she worked as a cleaner. She worked in private houses during the day and then in the evenings cleaned offices. However, she was an agronomic engineer by training and would like to find work in that area. Initially she had not had any hope because of her lack of English but that had improved since she had been working and speaking to her employers and colleagues. She stated that her husband had been working but stopped when he

had been told not to by the Home Office. She said that she made about £400 per month from her evening work and around £800 per month from her day time job although that varied according to her hours. Over summer, when people were on holiday, she provided cover and so was able to earn more. She said when they needed extra money, they borrowed from friends and family. She could not say how much.

18. When asked about the differences between Romania and the UK, she said the education system was better here. There was a lot of theory in Romania and hours of homework. Additionally, there was no thought given to the ability of students and to whether they could or could not follow the lessons. She said that school trips were organised here. She said that her mother lived in Romania but was here visiting at the moment. She also had a brother, but he was a truck driver and often driving all over Europe. The children were not very close to her mother as she had worked when they were young, and she had lived a distance away. They had a small piece of land in Romania. There was no re-examination.

19. In answer to my questions, the witness stated that the schools here were more geared to understanding the needs of the children and her daughters had targets set according to their ability. They had a good social life with parties, visits to friends and family and going to the park. The children were now able to go into town on their own and they had bank cards. They were taught to be independent in school. They were aware that they had rights. She said that she worked from 9 until 3 and then from 4.45 until 7. Her husband cooked, did the cleaning, collected the children from school and took them out. She would sometimes take the children to school, otherwise her husband did. They usually had to borrow money every month. They received child and working tax credits and housing benefit. Neither party had any questions arising and that completed the oral evidence.

20. I then heard submissions.

21. Mr Clarke submitted that the appellant's breach of two deportation orders and his continued presence in the UK was an ongoing offence and a matter which should be considered as being against the fundamental interests of society for the purposes of reg. 27(5). Such conduct was treated as an on-going offence under s.24(1)(a) of the Immigration Act 1971. It fell within the terms of 7(a) and (f) of Schedule 1 of reg. 27. Furthermore, the work the applicant undertook during the time of his illegal residence was also unlawful and in contravention of reg. 24(b). It did not assist that he claimed to have stopped working in 2016 as he had already known that he was here in breach of the deportation orders against him. Mr Clarke also urged me to find that the appellant's claim to have stopped working was not credible. Had it been true, he argued that the appellant would be fully aware of the household budget as money was tight. It was submitted that given the appellant's continued presence in the UK in breach of the orders, his failure to seek revocation of the orders from overseas

and the preserved findings, he posed a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

22. Mr Clarke then took me through the factors I needed to consider. He submitted that the appellant was 39 years old, neither he nor any of his family members had any health issues, their economic situation was not great as they claimed to be short of funds and his wife had a better job when they had been in Romania. The appellant had also had work there. The family were on benefits in the UK. The length of residence was short for the wife and children, just three years, and much of his residence was unlawful. There was no permanent right to residence. Little weight could be given to integration which had taken place at a time when an offence had been committed. He submitted that the appellant had spent over 30 years in Romania. He had some land there and he and his wife had family. his wife and children had lived there. There were considerable links with the country of origin. Mr Clarke did not seek to go behind the social worker's report but submitted that it did not say anything more than one would expect. The children could not speak English when they arrived, and it took a year for them to begin to get the hang of it which left just two years for integration. Their difficulties at school showed the extent of their ties to Romania when they came here. It had taken a year to begin to adjust. Whilst the report spoke about the benefits of the education system, there was no attempt at balancing the situation and no acknowledgment of how their best interests had been interrupted by coming to the UK and the difficulties the faced. Nor was there any consideration of resuming life in Romania. However, as they and their mother were entitled to be here, the issue for the Tribunal was to consider whether it was proportionate for the family to remain here without the appellant or for them all to return to Romania. Mr Clarke submitted that in both scenarios it was proportionate, and the appeal should be dismissed.

23. Ms Rutherford replied. She submitted that if I were to find that there was a genuine, present and sufficiently serious threat to one of the fundamental interests of society then the issue of proportionality had to be considered. However, she submitted that there was no such threat. The appellant's conviction dated back to 2005. It was the only one. Whilst it was accepted that he had entered in breach of the deportation order, there was no other criminal behaviour. He had settled down and married. He was a family man. His entry in breach of the deportation order was not enough to warrant a finding against the fundamental interests of society. It was not sufficient to just have a conviction; the appellant had to also pose a current threat. The appellant had been previously working in the UK and paying taxes. There was nothing to suggest that he had been working after being told to stop. He and his wife had not been able to put a figure on the money borrowed from friends and relatives as there was no set amount borrowed. He had been reporting as required. There was evidence of his wife's work and evidence had been given as to how the family supported itself.

24. On the issue of proportionality, the focus had to be on the children. They had been here since December 2015 and whilst three years may not be much for an adult, it was a long time in their lives. They had adapted well after initial difficulties and had worked hard to progress at school. The school reports referred to were from July 2016, not long after they had arrived here, and it was to be expected that they would have been having difficulties at that time. Those problems had now gone, and the girls were doing well. They no longer had any ties with Romania and it was in their best interests for them to remain here with both parents. The social worker's report discussed the situation of a separation from their father. Their mother would find it difficult to manage without him as she would have to cope with working, with the housework and with childcare. The family had links to the local community, they had family here, the appellant had the potential to work and ties with Romania were weak. After ten years of a deportation order, it was normal to consider setting it aside. Given the time that had passed and the strength of the family circumstances, deportation was not proportionate.

25. That completed submissions. At the conclusion of the hearing, I reserved my determination which I now give with reasons.

26. **Discussion and Conclusions**

27. I have considered all the evidence before me and have had regard to the submissions made. I reach my decision having taken all that before me into account and having considered the evidence as a whole.

28. Regulation 24(1) permits the Secretary of State to refuse to issue, revoke or refuse to renew a registration certificate if this is justified on grounds of public policy, public security or public health. In reaching his decision, the Secretary of State had regard to reg. 27(5) and (6):

> *'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.'

Schedule 1 of Regulation 27 CONSIDERATIONS OF PUBLIC POLICY, PUBLIC SECURITY AND THE FUNDAMENTAL INTERESTS OF SOCIETY ETC., states:

'…

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;

…

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;

…

(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;

…'

29. The facts are largely undisputed. The appellant has not shown that he has acquired rights of permanent residence and, indeed, any residence post deportation has been unlawful because it was in breach of the two orders issued against him. He has a conviction for assisting with illegal entry and despite giving him the opportunity to submit any evidence relating to the offence, none has been forthcoming. I have, however, seen evidence from the respondent to confirm the offence and the custodial sentence received in 2005. The appellant married his Romanian wife in 2006 and they have two daughters aged eleven and twelve. Both girls attend local schools. The appellant's wife works as a cleaner. During school hours she cleans private homes and in the evenings she cleans offices for two hours. She is a qualified agronomic engineer and in Romania was able to work in her area of expertise. The appellant had also worked in Romania. Here, he had worked as a carpenter (although there was disagreement over whether he was still working). The family received various benefits in the UK. The appellant's mother, brother and brother's family were in the UK along with uncles, cousins and many friends. The appellant's wife's mother and brother live in Romania. The appellant has some land in Romania which can be built on. They live in rented accommodation in High Wycombe and their rent is largely paid by housing benefits.

30. The parties agree that I am required to consider whether the decision taken by the respondent conforms with reg. 27(5) and (6). Essentially, I must consider whether the appellant represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society and if so whether the

decision complies with the principles of proportionality and whether all the relevant factors (set out in 27(6)) have been taken into account.

31. The respondent's case is that the appellant does present a genuine, present and sufficiently serious threat affecting a fundamental interest of society, i.e. the prevention of unlawful immigration, the abuse of the immigration laws and the maintenance of an effective immigration control system. It was argued for the respondent that the appellant's re-entry in breach of two deportation orders and his continued presence in the UK was an on-going offence and, having carefully considered the evidence and the submissions, I have to concur with that. I set my reasons out below.

32. I am satisfied that the appellant's conviction occurred almost 14 years ago and I bear in mind that a conviction in itself does not justify a decision to deport. However, it is the appellant's subsequent and on-going conduct that is relevant to the assessment of whether he presents a threat and it is that I now consider.

33. The appellant entered the UK in breach of two deportation orders. The previous judge found that he knowingly and deceitfully did so by using a circuitous route to enter on two occasions after he had been refused entry at an airport as the subject of a deportation order. That finding has been preserved. It is, therefore, the case that when the appellant last entered the UK and when he made applications for registration certificates for himself and his family (who had joined him in December 2015), he knew that he had entered unlawfully. When his application was refused for that very reason, he did not acknowledge his wrong doing, return to Romania and seek a revocation of the deportation order in the proper way as he should have done, but remained here in defiance of the deportation order and filed this appeal.

34. Additionally, when he applied for the registration certificate, he did not disclose to the respondent that he had a previous conviction. Indeed, he declared on his application that he had never been convicted of any crimes. It would be difficult, therefore, for me to find that the appellant's conduct does not represent a genuine, present and sufficiently serious threat to the prevention of unlawful immigration and the abuse of the law. By his continued residence in defiance of deportation he has shown only contempt for the laws of this country. His lack of remorse for his actions and his refusal to acknowledge his wrong doing only reinforces his willingness to continue to abuse UK immigration laws and does little to maintain the integrity and effectiveness of immigration control. I take note of the fact that similar conduct under the Immigration Act of 1971 is considered to be an offence: s.24(1)(a). Had he sought to have the deportation order set aside in Romania, as he should have done, he may well have succeeded, given the passage of time and what would then have been an unblemished history since his conviction. Regrettably, he chose to unlawfully re-enter, bring in his wife and two children and then attempt to regularise his stay without declaring his past history. His evidence to the First-tier Tribunal Judge that he had friends here who had been deported

but had stayed, only goes to reinforce his lack of respect for British immigration laws.

35. I was addressed by both parties on the issue of unlawful employment. Mr Clarke noted the complete inability of either witness to give any kind of detail as to the monies they allegedly borrowed on a monthly basis from friends and family. His submission was that if money had been so tight, and if only the appellant's wife was working, then they would have been able to state how much they had to borrow. Ms Rutherford argued that there was no evidence to suggest that the appellant had worked after he was told to stop in 2016 and that the reason that neither the appellant or his wife could state how much they borrowed was because there was no fixed sum. I have considered both sets of submissions. Contrary to what Ms Rutherford submitted, however, the appellant's own evidence does indicate that he worked after 2016. When he lodged his appeal form at the end of July 2017, he maintained that he last entered the UK in September 2015 *"and since then I have continued to work as SE (self-employed) in the UK"*. If the appellant had ceased working in 2016, there is no reason why he would say this a year later. I note that although the appellant later sought to correct that date of his entry by way of a witness statement, there was no correction of his claim to have worked since that time.

36. I also have regard to the letter dated 9 February 2018 from the appellant's representatives written to the Immigration Enforcement team. In that letter it is maintained that the appellant entered the UK in 2012 *"and has been… working here since then"*. The claim of continued work is repeated within the letter and further supports the allegation that the appellant has continued to work after 2016. There would certainly be no reason for the appellant's own representatives to misrepresent the position for their client. There are also unexplained large deposits into the appellant's account throughout 2017 at a time when he claims he was not in employment. These are separate from the benefits which are also shown going into his account and do not tally with the oral evidence that money was borrowed on a monthly basis.

37. I also find force in Mr Clarke's submissions. It is just not credible that the appellant and his wife could be so completely ignorant of what they had to borrow every month in order to make ends meet. They were not even able to provide a rough estimate. Neither could give any sum at all. If money was borrowed every month, it would have been quite straightforward to give some idea of the amount involved. I accept the amount could well have varied, as Ms Rutherford submitted, but that does not explain why no details whatsoever were forthcoming. Furthermore, the evidence given by the appellant and his wife as to his activities in the home was inconsistent. The appellant said his wife took the children to school, she said that he usually did and that she only did sometimes if she had a house to clean nearby. He said she did the cooking. She said he did. He said, when pushed for more details of his role at home, that he washed the dishes when needed. She said he did all the cleaning. He said he did nothing at home and it was "boring" whereas if he had been doing all the

housework and cooking as his wife claimed, he would not be doing "nothing". No attempt to reconcile this inconsistent evidence was made and I am left without any explanation as to why there should be such divergencies between the evidence on basic everyday matters. This only serves to raise doubt over what the appellant actually does to occupy himself and lends weight to Mr Clarke's submission that he is working. On the evidence before me, therefore, and for the reasons given above, I conclude that the appellant has continued to work unlawfully.

38. Having found, therefore, that the appellant does represent a threat to the fundamental interests of society pursuant to reg. 27(5), because his conduct does not demonstrate a respect for the immigration laws and indeed displays disregard for the effectiveness of immigration control, I now consider whether the decision was proportionately made in the context of the relevant factors listed at 27(6).

39. The appellant was born on 17 January 1978 and has therefore just turned 39. He has many working years ahead of him and the evidence is that he was employed in Romania prior to entry. He has also worked in the UK as a carpenter. He appears to be fit and well. His wife works here as a cleaner and worked in Romania as an agronomic engineer. According to the appellant's evidence, their financial situation here is not good. Whilst they have contributed to the economy by paying modest taxes, they have also heavily drawn on state resources by claiming a variety of benefits. The appellant's evidence was that they had done so even when he was previously working which does not suggest that the family would cease claiming benefits if the appellant were to go back to work (assuming he is not currently working). If he is working as I have found, then he is doing so without paying tax and national insurance.

40. The evidence of the appellant and his wife was that they struggle to the extent that they have to borrow money every month although they were unable to give any indication of how much and there is no evidence to confirm this. There was no suggestion that they were in debt or struggled financially in Romania.

41. The appellant's length of residence here is unclear but certainly any re-entry since 2005 has been unlawful. The appellant's wife and children joined him in December 2015 and so have been here just over three years. That is a relatively short period of time, even taking account of Ms Rutherford's submission that it is a long time in the lives of the children. On the other hand, both the appellant and his wife, and indeed the children, have spent the majority of their lives in Romania. If three years is a long time, then the time spent in Romania is far longer and would mean much more to the children. The appellant's wife stated in evidence that when they were there, life was fine and the children did not complain. It is only now, having been here and being able to compare the different life styles, that they have expressed a wish to remain here. I accept that the children have now adjusted to life and school here after what must clearly

have been a difficult first year when they were unable to communicate and had to learn English. It is to their credit that they did so and that they made good progress at school. I accept they have made friends although no evidence from any friends from school has been adduced. I note that whilst the family have relatives here, there are also relatives in Romania. The appellant has land in Romania. He owns no property here. The family live in rented accommodation. They appear to have moved at least once since the arrival of the children. No issues of health have been raised in respect of the appellant, his wife or children.

42. I take account of the social worker's report, the letters of support from friends and family, the school reports, evidence of work and all the other evidence submitted in support of the appeal when assessing the factors at 27(6).

43. Contrary to what is argued by the appellant in evidence and his wife (in her witness statement), I find that the children are not at crucial stages of their education. Both are still very young. The older child has not yet started her path to taking GCSEs and the younger one is not yet at secondary school. It was said that they liked the education system here better because they had less homework, school outings and more practical rather than theoretical work but these just constitute personal preference and are minor matters. The children are still very young. They have been in the UK for around a third - a quarter of their lives and speak both Romanian and English. Their involvement in the community, as indeed that of their parents, appears to be largely restricted to Romanian family and friends. All the supporting letters are from other Romanians and all friendships referred to in the evidence relate to the children of Romanian friends. The evidence pertaining to outings, parties and socialising focuses on the Romanian community. This is relevant because *"having extensive familial and societal links with persons of the same nationality or language does not amount to integration"* under the Regulations (s. 2 of schedule 1). There is no evidence before me of any links outside the Romanian community. I am, therefore, unable to find, on the available evidence, that the appellant and his family have integrated into British society.

44. Of course, in any event, "*little weight is to be attached to the integration of an EEA national or the family member of an EEA national within the UK if the alleged integrating links were formed at or around the same time as…an act otherwise affecting the fundamental interests of society*" (sch. 1: 4). So even if I had found there was integration, which I have not for the reasons above, it would carry little weight because the appellant has been here unlawfully in breach of a deportation order.

45. The report of the social worker was based on an acceptance that the appellant played a substantial role in the upbringing of the children and in supporting his wife. This does not accord with the diverging evidence I heard from the appellant and his wife as to his input into household and family matters. It is also at odds with the appellant's unsatisfactory evidence at the hearing where

he knew nothing about how the children were doing at school and said his wife would know and where he claimed to not recall any friends coming to the house in direct contradiction to his wife's evidence that friends came and even slept over. I also note that whilst his evidence was that the children did not keep contact with their friends in Romania after leaving, his wife's evidence was that they did and that gradually contact came to an end. Nevertheless, whatever his involvement or lack of involvement with the lives of the children, I accept that they would prefer to be with both parents and that they would prefer to continue living in the UK with them. Their position and wishes are matters I take into account, but they are not a trump card.

46. Plainly the family have several options; that of accompanying the appellant to Romania or of remaining here without him. There is also the possibility of him making an application to have his deportation order revoked and then re-joining the family.

47. The appellant's wife and children have lived apart before. They were assisted by other family members in Romania and indeed the appellant's wife's witness statement indicates that the children stayed with their grandparents whilst she travelled back and forth between the UK and Romania. Should the family decide to stay here, they would be able to make the relatively short trip over to Romania to visit the appellant from time to time and would be able to make use of modern means of communication in the meantime. Whilst I accept that this would cause disruption, as the social worker's report maintains, they did live apart before and although the report purports to consider difficulties faced by the children whilst separated from their father, it also finds that these may have been exacerbated by the trauma of having to fit into a new society. It is unclear what period the social worker is referring to here as the separation from the appellant was whilst the children were still in Romania. The report also, of course, deals with the separation on the premise that it would be permanent. That need not be the case. There is a large family here to assist and I do not accept the appellant's wife's evidence that she would have to manage on her own with the children were the appellant to leave. It is plain that she would have a number of family members to turn to for help.

48. I find that the appellant and his wife brought the children to the UK knowing that he was the subject of a deportation order. They must take part of the responsibility for any disruption to family life as it is their actions that have placed the family in this position. I fully accept that the children are innocent victims in this situation and I do have sympathy for them and fully understand that they do not want more disruption in their lives. However, the separation may not be long and they would be able to have contact by various means in the meantime.

49. Should the family decide to return to Romania with the appellant, I accept there would be some need to adjust. However, they would not be returning to an alien environment. They have retained their Romanian identity despite what

the social worker states in her report and, as I have pointed out above, the vast majority of their socialising is within the Romanian community. To that extent, they retain the culture and identity of their country of origin. I do not understand what the social worker means when she talks about the children having adopted the culture here because I am not told in what way it differs from Romania where it seems to me the appellant and his family had a similar life style.

50. The children are not a crucial stage in their education and they have experience of schooling in Romania (from the age of two). They have, of course, spent more years in Romania and in school there than they have here. The adjustment to life there would be less of a trauma than it was coming here. I note the appellant's wife's evidence that the children have said they are not happy about returning but they are minors and it is not for them to make decisions about the future of the family. I see no reason why their best interests would be compromised by returning with both parents to a country where they spent the larger part of their lives and where they still have family. It was not claimed by either witness that they would have no place to live.

51. For all the reasons given, I therefore conclude that, much as I sympathise with the position of the appellant's daughters, the decision to refuse the appellant's application under reg. 27 (5) and (6) was proportionately made. I find that his continued residence in breach of the deportation order against him is an on-going offence and that it represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

52. **Decision**

53. The appeal is dismissed.

54. **Anonymity**

55. I continue the anonymity order made by the First-tier Tribunal.

Signed

Upper Tribunal Judge

Date: 25 January 2019