IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004810

First-tier Tribunal No: HU/01244/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

18th January 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

GN
(Anonymity Order made)

Respondent

Representation:
For the Appellant: Mr A Everett, Senior Home Office Presenting Officer
For the Respondent: Litigant in Person

Heard at Field House on 12 January 2024

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing GN's appeal against the respondent's decision to make a deportation order against him in accordance with regulation 27 of the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations"), as saved by the Citizens' Rights (Restrictions of Rights of Entry and Residence)(EU Exit) Regulations 2020.

2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and GN as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is a citizen of Romania, born on 16 October 1972. On 3 March 1997 he was sentenced at Suceava Tribunal in Romania to 20 years' imprisonment for

offences of murder, robbery and unlawful entry which he committed on 9 October 1995. He served 14 years and 3 months of that sentence in prison before he was released in 2010. In May 2018 he came to live in the United Kingdom exercising the right of free movement which existed while the United Kingdom was part of the European Union and has remained resident, working in the United Kingdom since then. On 8 September 2019 he applied for leave to remain under the European Union Settlement Scheme (EUSS). Although he was required to state as part of that application whether he had any criminal convictions, he did not mention his convictions for murder and robbery. He was granted pre-settled status in the United Kingdom on 23 September 2019.

4. On 28 May 2020 the appellant was arrested for battery, on suspicion of assaulting his wife but no further action was taken and he was released without charge. On 24 December 2021 he was arrested for affray, but again no action was taken against him and he was not charged. However the police informed the respondent of the appellant's convictions in Romania. The Home Office then began to consider whether he should be deported from the United Kingdom.

5. On 17 May 2022 immigration officers attended the appellant's home address and detained him for the purpose of deportation. He was invited to identify any reasons why he should not be deported and provided written representations. He was detained while the respondent considered those representations. On 22 June 2022 the respondent issued the decision which is the subject of this appeal, concluding that his removal from the United Kingdom was justified on grounds of public policy and public security because he represented a genuine, present and sufficiently serious threat affecting the fundamental interests of society. The respondent further decided that the appellant's removal from the United Kingdom was compatible with the appellant's qualified right to respect for his private and family life and refused a human rights claim to the contrary.

6. The appellant appealed against the decision to deport him and the decision to refuse his human rights claim. His appeal was adjourned to enable the Tribunal to obtain relevant material from the Family Court and then came before First tier Tribunal Judge Bulpitt on 4 July 2023.

7. Judge Bulpitt noted the facts which were not in dispute. He noted that the appellant's parents and sister continued to live in Suceava County, Romania, and that he had a close relationship with them. He noted the facts of the appellant's criminal offending in Romania, namely that at the age of 23 years he robbed and murdered a 60 year old man whom he considered owed him a debt, attacking and punching the man until he lost consciousness and then putting a towel in the man's mouth until he suffocated, and stole money from the man's apartment, and that he served 14 years and 3 months of his 20 year sentence before being released on good behaviour. The judge noted further that the appellant married his wife O in Romania and had a daughter with her, M, on 22 September 2015, and that the appellant moved to the UK in 2018 and his wife and daughter followed him in 2019 after he had found work as a painter and decorator. The appellant applied for settlement under the EUSS on 8 September 2019 but did not disclose his convictions in Romania in that application or his subsequent application on 31 December 2019. He was granted pre-settled status. His relationship with O broke down and he was arrested on 28 May 2020 following a complaint to the police by O, but was not charged. The couple divorced in 2022. In spring 2021 the appellant began a relationship with C but the relationship ended in May 2022 and C was pregnant with his child. C gave birth to the appellant's son, R, on 6 June 2022 whilst the appellant was in detention. R was made the subject of a child

protection plan because of concerns about C's ability to care for him. At the time the respondent made the decision to deport the appellant in June 2022 it was not accepted that he had a genuine and subsisting relationship with R and it was considered that he posed a threat to R.

8. The judge noted that on 11 July 2022 DNA evidence confirmed that the appellant was R's father and the appellant then participated in Family Court proceedings to determine what should happen to R. A positive parenting assessment was made for the appellant and the appellant was permitted contact with R, initially supervised but subsequently unsupervised. By the time of the hearing before Judge Bulpitt the Family Court proceedings were continuing and the local authority plan was for R to be placed in the appellant's case, although with contingency plans in the event that he was deported to Romania. The judge had before him the relevant documents from the Family Court proceedings which had been disclosed to him upon an order from the Family Court and which included parenting assessment reports for the appellant and for C as well as psychological reports and psychological risk assessments and the final care plan of the local authority.

9. Judge Bulpitt accepted that the appellant had given a candid and transparent account about making his applications for EUSS settlement and was satisfied that his failure to mention his convictions in Romania was not a deliberate attempt to mislead the respondent but instead a genuine mistake in part resulting from his wish to move on from his criminal past. The judge was not satisfied that the appellant had perpetrated any criminal offence or violence against O and did not consider that the history between the appellant and O indicated that he represented a threat to the interests of society in protecting the public or preventing social harm. He was satisfied that the appellant had a genuine and subsisting relationship with M which involved him caring for M regularly including overnight stays and extended stays and that his relationship with M included him seeing her for shorter periods of time, sometimes alone and sometimes together with O. As for his relationship with C, the judge considered that whilst the relationship was chaotic and dysfunctional it was not the continuously abusive relationship that was portrayed at that time and he did not consider it likely that the appellant committed any criminal offence against C or that he had been violent towards her. The judge was not satisfied that the appellant's history with C indicated that he presented a risk to the public and he concluded that the appellant had a genuine and subsisting relationship with R.

10. Judge Bulpitt concluded that the appellant did not represent a genuine, present and sufficiently serious threat to the interests of society to justify his removal and he concluded that the appellant's removal from the United Kingdom would have a disproportionate effect on himself and on M and R when balanced against any limited threat he posed. He found that the respondent's decision to deport the appellant breached his rights under the Withdrawal Agreement and that his removal would amount to a disproportionate interference with his right to respect for his private and family life under Article 8. He accordingly allowed the appeal.

11. Permission to appeal against that decision was sought by the respondent on three grounds: firstly, that the judge had failed to give adequate reasons for concluding that the appellant's deportation would be disproportionate; secondly, that the judge had erred in his consideration of the best interests of the appellant's children; and thirdly, that the judge had erred by giving weight to the respondent's 2 year delay in taking deportation action against the appellant.

12.Permission was initially refused in the First-tier Tribunal, but was subsequently granted in the Upper Tribunal upon a renewed application.

13.The matter then came before me. The appellant appeared as a litigant in person. I heard submissions from Ms Everett and a response from the appellant, as discussed below.

Discussion

14.Judge Bulpitt's decision is a particularly detailed and comprehensive one which includes a proper application of the law, full regard to and detailed assessment of the evidence and all the relevant issues and clear and cogent reasons for the conclusions reached. As I indicated to Ms Everett at the hearing, I was not particularly impressed with the Secretary of State's grounds of appeal challenging the decision. Although Ms Everett made a valiant attempt to support the grounds, I do not find them to be made out and consider them to be little more than a disagreement with the judge's decision.

15.I turn to the grounds as initially pleaded. Contrary to the assertion at [2] of the grounds it is plain from the judge's reference to the legal framework at [8] and from footnote 2 on page 3 of his decision that he considered the appellant's rights under the EEA Regulations on the basis that he was afforded the lowest level of protection. In so far as the grounds at [3] to [9] assert that the judge failed to give due weight to the appellant's propensity to present aggressive and abusive behaviour and that the judge made irrational findings about his reformed character, I do not agree that that is the case. The judge considered the appellant's past relationships and his behaviour in great detail at [59] to [66]. The grounds at [5] rely upon the social worker's comments in August 2022, as mentioned by the judge at [59], but completely fail to acknowledge or consider the judge's consideration and findings from the second part of [59] through to [66] in which he provided detailed reasons for the social services' change in view and where he gave cogent reasons for concluding that the respondent's assessment was misconceived.

16.The grounds wrongly, in my view, assert at [10] that the various reports from the Family Court Proceedings regarding the appellant's relationship with his daughter, M and son, R, were compiled largely from the appellant's own evidence. It is clear that they involved the opinions of numerous professionals based upon interviews with, and observations of, the appellant, as well as other relevant parties. That was made clear by the judge at [75] of his decision who, having given detailed consideration to those expert reports and opinions, and having undertaken a careful assessment, at [54] to [58] and [67] to [68] of the appellant's relationships with his children and the impact upon them of his deportation, in the light of those expert opinions, provided cogent reasons for concluding that the best interests of the children involved the appellant remaining in the UK. The judge did not, however, treat the children's best interests as determinative of the outcome of the appeal, as the grounds assert at [13]. Rather, that was a matter to which he accorded weight in his overall proportionality assessment, both under the EEA Regulations and in relation to Article 8, as he was perfectly entitled to do.

17.Finally, the grounds assert that the judge erred in giving weight to the respondent's delay in taking deportation action against the appellant, contrary to the findings in Reid v Secretary of State for the Home Department [2021] EWCA Civ 1158 59. It seems to me that the reliance upon Reid is misconceived, since the circumstances in which the judge considered the issue of delay was not the same as in that case. In this case, that was a matter upon which the judge made an observation at [78] when

considering the fundamental interests of society in Schedule 1(7) of the EEA Regulations, in particular Schedule 1(7)(f), and was a matter to which he was entitled to have regard in the context that he did.

18.I turn next to the specific submissions made by Ms Everett, the first of which was that the judge failed adequately to deal with the principles in R v Bouchereau [1978] QB 732 and SSHD v Robinson [2018] EWCA Civ 85 in regard to past conduct alone being enough to demonstrate a sufficiently serious threat to society. Whilst the judge did not specifically cite those cases I do not accept that he failed to appreciate or give due regard to the nature and seriousness of the appellant's past offending. The judge had full regard to the very serious nature of the appellant's past conduct at [73] and went on to provide reasons why he nevertheless concluded that he did not pose a sufficiently serious risk to justify deportation. The judge gave full and cogent reasons, based on the evidence before him, for concluding that the appellant was a reformed and rehabilitated person and that he did not pose a threat to society sufficient to justify his deportation. I do not consider that the decisions in R v Bouchereau [1978] QB 732 and SSHD v Robinson [2018] EWCA Civ 85 preclude such a conclusion and I accept that that conclusion was one which was ultimately open to the judge.

19.Ms Everett also challenged the judge's decision at [77] whereby he gave weight to the fact that the appellant had entered the UK and remained here legitimately, submitting that we could not know if the Secretary of State would have granted him leave under the EUSS if his convictions had been disclosed. Ms Everett made it clear that she was not seeking to go behind the judge's acceptance of the appellant's explanation for failing to disclose his convictions, but that her challenge was to his reference to, and the weight he gave to, the appellant having been in the UK legitimately. However it seems to me that that is rather a speculative assertion to make as it assumes also that if refused leave under the EUSS the appellant would have remained in the UK unlawfully. As the judge found at [77], the appellant was not a person who had deliberately evaded immigration control, and it seems to me that he was perfectly entitled to accord the weight that he did to that matter. In so far as Ms Everett also made submissions on the judge's findings about the respondent's delay in pursuing deportation proceedings, that is a matter I have already dealt with above. It was not the case, as Ms Everett suggested, that the judge considered that the delay reduced the threat that the appellant posed, but rather it was a matter which was relevant to the fundamental interests of society, to the extent discussed above. It was, in my view, open to the judge to make the observations that he did in that regard.

20. For all these reasons I do not consider there to be any merit in the respondent's challenge to Judge Bulpitt's decision. The decision was a full and detailed one which took account of all the evidence and properly applied the relevant legal provisions. The judge was perfectly entitled to conclude as he did and I find no errors of law in his decision.

Notice of Decision

21.The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The Secretary of State's appeal is therefore dismissed. The decision to allow GN's appeal therefore stands.

Anonymity

The anonymity direction made by the First-tier Tribunal is maintained.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

15 January 2024