



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-001108

First-tier Tribunal No:
HU/56922/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 25th of June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

COSMIN-FLORIN SANDU
(No anonymity order made)

Respondent

Representation:

For the Appellant: Mr Melvin
For the Respondent: Mr S Shah

Heard at Field House on 2 May 2024

DECISION AND REASONS

1. This is the appeal of the Secretary of State against the First-tier Tribunal's decision of 9 February 2024 to allow the appeal of Cosmin-Florin Sandu, a citizen of Romania. The appeal below was brought against the Secretary of State's refusal of Mr Sandu's application to

remain in the UK as the partner of Raluca-Iasmina Sandu, also a Romanian citizen.

2. Ms Raluca-Iasmina Sandu holds EU pre-settled status and married the Appellant in Romania in January 2022. Their case they mounted before the First-tier Tribunal was essentially that the immigration decision failed to acknowledge the insurmountable obstacles or unjustifiably harsh consequences that it occasioned, given that she suffered from mental health issues and was undergoing fertility treatment in the UK. Ms Sandu has limited ties in Romania and no connections there having come to the UK with her parents, aged four or five, in 2007, and has been educated here and achieved a First Class degree in forensic psychiatry. She was now pursuing a Masters degree and all her family resided here; she spoke only limited Romanian. She helped her mother who herself had mental health problems, taking her to medical appointments whilst her father worked long hours.
3. The Secretary of State refused the application because Mr Sandu was perceived as having overstayed his leave to remain, having arrived in the UK on 9 April 2022 with visitor leave only until October 2022. Mr Sandu's father and sister lived in Romania, and his mother spent around half the year there. In the UK he had worked as a groundsman.
4. The First-tier Tribunal accepted the facts set out above, noting that Ms Sandu would be unable to complete her Masters in Romania based on a UK degree and would have to work in lower-paid employment than her qualifications would otherwise permit.
5. Based on these findings, the First-tier Tribunal concluded that the factors raised above did not constitute insurmountable obstacles: her future working arrangements were essentially a matter of choice on her part, and there was no evidence that she could not find fertility treatment there, or that her mental health, for which she had been counselled until the age of eighteen, had deteriorated because of her worries about Mr Sandu's immigration status; nor was their evidence that she could not receive any necessary treatment in Romania. She had not explored whether social care could replace the assistance she provided to her mother.
6. Nevertheless the First-tier Tribunal found that the Secretary of State's carried unjustifiably harsh consequences:
 - (a) Whilst the Appellant had been present unlawfully since October 2022, meaning that his relationship was one formed when he was present unlawfully and therefore carried little weight, he had sought to regularise his status consistently.
 - (b) The Sponsor's relocation to Romania for an uncertain period whilst the Appellant sought entry clearance would effectively terminate her studies and prevent her from completing her Masters, interrupt

the medical investigations into her fertility, remove her from the country where she had been raised and separate her from her supportive family, and deprive her of support she presently received from the Appellant's income, all of which would undoubtedly cause her mental health to deteriorate and potentially adversely impact the Sponsor's mental health. There was only a limited public interest given a future entry clearance application would foreseeably succeed. The Appellant might not be able to resume his present employment on a return to the UK and they might not be able to meet the financial requirements if he left the country.

- (c) If the Sponsor remained in the UK, her separation from the Appellant would similarly impact on her with foreseeable consequences for her mental health, study and fertility treatment.
- (d) This was a case where the dicta in Agyarko [2017] UKSC 10 applied, such that an immigration decision might carry disproportionate consequences for an individual “even if residing in the UK unlawfully, [and] was otherwise certain to be granted leave to enter, at least if an application were made from outside the UK, then there might be no public interest in his or her removal and that point was illustrated by Chikwamba.”

7. The Secretary of State appealed, on the basis that Mr Sandu's earnings were procured in breach of the prohibition on working as a visitor.
8. The First-tier Tribunal granted permission to appeal on 14 March 2024 because the Judge's reasoning was arguably inadequate given the lack of clarity of the findings as to how it was that Mr Sandu would meet the entry clearance requirements on a future application.
9. Mr Melvin provided a useful skeleton argument of 1 May 2024 for the hearing before me, correcting the Secretary of State's understanding of the background immigration history. In reality Mr Sandu had applied under the EUSS scheme before his visitor leave expired, that application being refused on 10 September 2022, against which he brought an administrative review; on 23 May 2023 he had made the application the refusal of which led to the current appeal. Thus Mr Sandu's work had been lawful given that his leave had been statutorily extended whilst he had sought administrative review of the EUSS scheme refusal, and then onwards as the partner application was treated as a variation of his EUSS application. This of course removed the factual foundation for the original refusal and the basis on which the Secretary of State's appeal was pursued.
10. Nevertheless Mr Melvin contended that the First-tier Tribunal's reasoning was flawed: it had made contradictory findings, at one point in its decision finding that Ms could receive treatment in Romania for

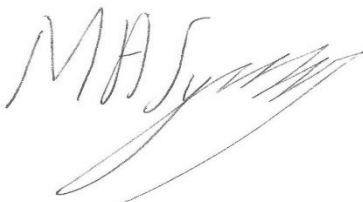
any mental health difficulties, but then finding that separation from her family or from Mr Sandu would damage her mental health.

Decision and reasons

11. The difficulty for the Secretary of State in this appeal is that the original grounds of appeal were based on a factual misapprehension, as indeed was the immigration decision itself. That is very unfortunate as public funds and judicial resources have been spent considering a decision made on a wrong and misleading basis; the Secretary of State compounded the problem by seeking and obtaining permission to appeal based on the same inaccurate premise. Whilst Mr Melvin's skeleton argument raises issues that are undoubtedly relevant in principle to the balancing exercise in an Article 8 appeal, no application to vary those grounds of appeal was formally made in writing, nor even orally before me.
12. Modern public law, of which immigration proceedings are effectively part, encourages the need for procedural rigour. I do not believe that it would be right to expect Mr Sandu to meet a case other than pleaded in the Secretary of State's grounds of appeal.
13. I considered Mr Melvin's submissions *de bene esse* in order to determine whether there was any truly fundamental error in the First-tier Tribunal's approach, but it seems to me that whilst it was a generous decision and not one to which every immigration judge would necessarily subscribe, it fell within the ambit of lawful responses to the available evidence. The essence of the reasoning is clear, and is to the effect that the vulnerable Sponsor would suffer significant hardship were she required to relocate to Romania on a long or short term basis, and that she could not reasonably be expected to live alone without Mr Sandu beside her. This state of affairs was seen as amounting to unjustifiably harsh consequences. On the particular facts of this case, given its procedural history, I consider that conclusion should stand.

Decision:

The decision of the First-tier Tribunal contains no material error of law.
The appeal is dismissed.



Deputy Upper Tribunal Judge Symes
Immigration and Asylum Chamber

15 June 2024