IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000171
First-tier Tribunal No:
DA/00026/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 28 June 2023

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

ABDULRAHMAN HADAD
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Not present or represented
For the Respondent: Ms Isherwood, Senior Presenting Officer

Heard at Field House on 7 June 2023

DECISION AND REASONS

1. On 26 April 2023, the Upper Tribunal (UTJ Blundell and DUTJ Hanbury) found that the First-tier Tribunal had erred materially in law in allowing the appellant's appeal against the respondent's decision to deport him from the United Kingdom. We set aside the decision of the First-tier Tribunal in full and ordered that the decision on the appeal would be remade in the Upper Tribunal. This is the decision on the appeal, which is made following a further hearing on 7 June 2023. It is to be read alongside the Upper Tribunal's first decision and I do not propose to rehearse matters which were set out in that decision.

2. The appellant did not attend the hearing on 7 June 2023. He did not attend the first hearing before the Upper Tribunal either, and the solicitors who were previously instructed to act for him (Wilsons) wrote to the Upper Tribunal shortly before that hearing to cease acting.

3. As foreshadowed by Mr Clarke, who represented the Home Office at the previous hearing, it seems likely that the appellant has left the United Kingdom. Ms Isherwood was helpfully able to inform me that Home Office records showed that he had left the United Kingdom on 22 October 2022, bound for Mihail Kogălniceanu International Airport in Constanta, Romania on a Wizz Air flight. There was no reason to think that he had subsequently returned to the UK, she submitted.

4. This is obviously not a case in which the appellant's departure from the United Kingdom requires me to treat his appeal as withdrawn. In the circumstances, I considered whether the appellant had been given proper notice of the hearing. The notice of hearing had been sent to the appellant's last known address in the UK and to a gmail email address which he has consistently used in his dealings with the Home Office and Probation staff. I noted that the Upper Tribunal's staff had checked with the Home Office to ensure that the gmail address was the one which the appellant had most recently used in correspondence with that department.

5. In the circumstances, I was satisfied that the appellant had been given notice of the hearing or at least that reasonable steps had been taken to notify him of the hearing, as required by rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008. I was satisfied that it was in the interests of justice to proceed with the hearing, since the appellant was aware of it and had taken no steps to make representations in person or in writing.

6. I heard submissions from Ms Isherwood, who relied on the respondent's decision and added the following. It was clear, she submitted that the appellant was only entitled to the lowest level of protection against deportation and that he posed a genuine, present and sufficiently serious threat to the fundamental interests of the United Kingdom. It was important to note his stance in relation to the offences he was known to have committed. He had not accepted responsibility for his convictions in Romania, stating that they were brought against him due to his heritage, and he had attempted to minimise or deny his offences in the UK. His statement to Dr Cordwell that he had not been sexually aroused by the images of children he had downloaded was inconsistent with his statement to the Probation Service that he had masturbated over those images. There were 49 images and they were not of the same child, which cast light on his suggestion that the images were of one child who reminded him of a childhood sweetheart.

7. The Probation Service has concluded that the appellant presented a medium risk of serious harm to children and it was easy to see why. The appellant was seemingly resistant to change and monitoring. He had stated in his interviews with the Probation Service that he intended to leave the United Kingdom but he had been told that he was not permitted to do so and that he would have to speak to the police, but there was no reason to think that he had done so. He had told the Probation Service that the police could not do anything to stop him leaving the country. The picture which emerged was of a man who did not accept the past and had no desire to change for the future. He clearly represented a genuine, present and sufficiently serious threat to the fundamental interests of the United Kingdom.

8. There was no real basis, Ms Isherwood submitted, upon which to conclude that the appellant's removal would be disproportionate. It was difficult to see how he

could have made that submission given that he had chosen to return to Romania. He had no obvious ties to the UK and the expert report of Dr Cordwell painted him as something of a loner. His deportation would be a proportionate course, both in relation to the EEA Regulations and Article 8 ECHR.

9. I reserved my decision at the end of Ms Isherwood's submissions.

Analysis

10. It is common ground that the appellant is only entitled to the lowest level of protection against deportation.

11. I accept Ms Isherwood's submission that the appellant represents a genuine, present and sufficiently serious threat to the fundamental interests of the United Kingdom. In reaching that conclusion, I have considered the extensive material from the Probation Service which is to be found at pages 62-417 of the appellant's FtT bundle and the report of Dr John Cordwell, which is to be found at pages 11-51 of the same bundle. I have also taken careful account of the submissions made at [10]-[12] and [19]-[26] of the skeleton argument prepared by Ms Gunn of counsel for the hearing before the FtT and the appellant's first and second witness statements, which are dated 19 January 2022 and 25 July 2022 respectively.

12. As stated in the skeleton argument prepared by Ms Gunn, the burden is on the expelling state to show that the personal conduct of the individual concerned represents a genuine, present and sufficiently serious threat. Previous convictions are relevant only insofar as the circumstances which gave rise to that conviction are evidence of personal conduct constituting a present threat to the requirements of public policy. General considerations of deterrence and revulsion normally have no part to play in the consideration of this issue.

13. The appellant has a number of convictions. The offences which took place in Romania were in 2013 and 2015. They are described in the lengthy document from the UK Central Authority for the Exchange of Criminal Records.

14. On 6 September 2013, the appellant was convicted of three offences: (i) the initiation or constitution of an organised criminal group, joining or supporting, in any form, of such group; (ii) importation of narcotics; (iii) other operations regarding the circulation of drugs. Criminal sanctions were imposed by the Bacau Tribunal but these were replaced by a sentence imposed by the Bacau Court of Appeal on 25 February 2014: five years' imprisonment, loss of the rights to vote and to be appointed to public office.

15. On 16 June 2015, the appellant was convicted of a further offence at the court in Constanta. The offence was driving without a licence or whilst disqualified. Again, criminal sanctions were imposed by that court but were varied on appeal. At the Constanta Appeal Court on 20 November 2015, the appellant was sentenced to five years' imprisonment for this offence. The Court made the following remarks in connection with this sentence:

> Under art. 36 paragraph 3 the Penal Code deducts from the main sentence the served period from 20.10.2012 to date. Cancels the implementation forms issued under the Penal Sentence

272/D/06.09.2013 by Bacau Tribunal and orders the issue of new implementation forms.

16. As I understand it, therefore, the 2015 sentence of imprisonment was to be served concurrently with the 2013 sentence. I accept what the appellant says to that effect at the end of [16] of his second witness statement.

17. As for the appellant's conviction in the United Kingdom, he was convicted at East London Magistrates' Court on 29 January 2020. The offence related to the appellant's possession of 49 indecent images of children. He was sentenced to a community order 1 year, a rehabilitation activity requirement of 15 days maximum, a programme requirement of 27 days, unpaid work requirement of 60 hours, costs of £85, victim surcharge of £85, and a sex offenders notice 5 years.

18. Dr Cordwell considered the appellant to pose a low risk of further sexual offending. In that respect, he differed from the rather earlier assessment undertaken by the Probation Service, in which the appellant was thought to present a medium risk of harm to children. Although Dr Cordwell is eminently well qualified to offer his opinion on such matters, I prefer the rather older OASys assessment. I accept Ms Isherwood's submissions about the limitations of Dr Cordwell's report, for the following reasons:

19. Firstly, whilst Dr Cordwell was apparently aware of the fact that the appellant had 49 images of different children in his possession, it is not clear from his report whether his assessment of the appellant's risk profile was based on that version of events. It seems that the appellant maintained to Dr Cordwell, as he does in his statement for this appeal, that all of the images were of a girl who resembled his childhood sweetheart. The assessment of risk should evidently have taken place on the basis of the facts upon which the appellant was convicted, rather than a later account which he gives to a psychologist. It is not difficult to see that a man who has 49 indecent images of different children poses more of a risk than a man who had 49 images of the same child. Dr Cordwell should have stated clearly that he undertook his assessment on the former basis but he did not do so.

20. Secondly, it is not clear from Dr Cordwell's report whether he proceeded on the basis that the appellant had masturbated to the images. The appellant suggested to Dr Cordwell that he had not done so, and that he had merely masturbated to thoughts of his childhood sweetheart after looking at the images. The appellant admitted in his assessment with the Probation Service that he had masturbated to the images but he amended that account when he spoke to Dr Cordwell. Again, Dr Cordwell should have stated clearly which version formed the basis of his assessment, but he failed to do so. Again, that failure affects the weight which I can give to his conclusions; the risk presented by a man who derives sexual gratification from 49 different images of pre-pubescent girls is of a different magnitude to the risk presented by a man who possesses those images but derives no sexual gratification from them.

21. Thirdly, although Dr Cordwell was clearly aware of the appellant's convictions from Romania, they scarcely feature in his assessment of risk. The appellant's account of his involvement in the drugs trade in Romania is simply that he wanted to make some money by selling to his friends cannabis which he had received in the post from Greece. Whilst the sentences imposed seem rather

high if that is true, I have no reason in the documents to doubt the appellant's account. But Dr Cordwell does not consider whether this history of turning to crime at times of impecuniosity illustrates a propensity to do so again in the future. That is evidently a different type of risk to that which arises from the appellant's UK convictions but it is necessarily relevant to the holistic assessment which is required, in my judgment.

22. Fourthly, Dr Cordwell treated the appellant as a person who had been compliant with every aspect of his sentence but, as Ms Isherwood submitted, his more recent actions suggest some defiance on the part of the appellant. It is clear from his Probation Records that he required the police's permission in order to leave the country but that he had no intention of seeking the same. He wanted to leave the United Kingdom in order that he could see his family and told the Probation Officer that the British authorities were not able to prevent him doing so. A note was made on his Probation records in November 2020 that he 'does not appear to take his SOR [Sexual Offenders Registration] seriously.' An earlier note from March 2020 records an observation that the appellant had 'mocked' the requirement to comply with the order. That attitude is relevant to the appellant's risk of reoffending but was not considered by Dr Cordwell, even though it was made clear in the Probation records with which he was provided.

23. Fifthly, as Ms Isherwood submitted, the appellant's attitude to all of his convictions was relevant to the assessment of risk. He accepts in his statement that he was involved in importing cannabis to Romania but he states that he was treated unfairly by the authorities on racial grounds. He does not accept that he had anything to do with the subsequent driving offence; he states that he was 'told' by officials to plead guilty to this offence. And the same minimisation is apparent in relation to the appellant's offending in this country, as is clear from the differing versions of the offence given to the Probation Service and Dr Cordwell. Insofar as Dr Cordwell proceeded on the basis that the appellant was consistent and trustworthy, I do not agree.

24. The appellant was described by Dr Cordwell as having some issues with online gambling. It is clear that he wished to win a significant sum of money in order that he could visit his family. He was seemingly unable to afford such a visit without a win of several thousand pounds, which is why he was engaging in this behaviour. He told Dr Cordwell that this habit was under control and Dr Cordwell seemingly accepted that to be the case. In my judgment, however, there are proper reasons (as stated above) to view such assertions from the appellant with considerable circumspection. He gave Dr Cordwell assurances that he was not sexually attracted to children. Those assurances were also accepted but should, in my judgment, have been viewed with circumspection also.

25. I have also considered the effect of paragraph 3 of schedule 1 to the Immigration (EEA) Regulations 2016 in assessing the likelihood that the appellant's continued presence in the United Kingdom represents a genuine, present and sufficiently serious threat affecting of the fundamental interests of society. Given that he has received lengthy custodial sentences in the past, it more likely that his continued presence represents a threat to the interests of this country.

26. Taking account of all of these factors, including my concerns about the appellant's behaviour and the detailed report of Dr Cordwell, I consider that the

appellant poses a genuine, present and sufficiently serious risk to the fundamental interests of the United Kingdom. I consider that there is a genuine, present and sufficiently serious risk that he will seek to involve himself in the drugs trade in this country in order to fund his gambling, or that he will commit further sexual offences against children, whether in person or online.

27. That conclusion is not determinative, however, and it remains for me to consider whether the appellant's deportation to Romania would be a proportionate course: regulation 27(5)(a) refers.

28. In considering that question, I take account of all of the factors at regulation 27(6) and of the submissions made by Ms Gunn in the First-tier Tribunal. The appellant is a young single man with no close family in the UK. I accept that he suffers from depression, as detailed in Dr Cordwell's report. His economic situation was not good whilst he was in the UK and despite the work ethic which was noted by Dr Cordwell and by the FtT, he worked long hours in a convenience store for very low pay. He entered the UK in order to work when he was released from prison in Romania and was in this country for some years, although there is very little evidence of any cultural integration. Certainly the 'significant degree of wider cultural and societal integration' required by paragraph 2 to schedule 1 of the Regulations is not present here, whether with reference to the appellant's working in a corner shop or to the limited ties and failed short-term relationships he has described in his statement. Taking all of those matters into account, I am amply satisfied that the respondent has shown that the appellant's deportation is a proportionate course for the purposes of the Regulations. The risk he presents to the country clearly outweighs his ties to the UK.

29. Given the appellant's return to Romania, it is by no means clear to me that he can even assert that his human rights would be the subject of interference by the decision under appeal. Were I to consider the status quo ante, however, I would come to the clear conclusion that the appellant's removal would be a proportionate course, given the extant risk he presents and the limited ties he has here.

Notice of Decision

The decision of the FtT having been set aside, I remake the decision on the appellant's appeal by dismissing it under the Regulations and on human rights grounds.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Date 19 June 2023