



**Upper Tribunal  
(Immigration and Asylum Chamber)  
OA/08767/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 1 November 2017**

**Promulgated**

**On 17 November 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MURRAY**

**Between**

**ANDRA ZOLTAN BANATI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No representative

For the Respondent: Mr Nath, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Hungary born on 11 May 1981. He appealed against the decision of the respondent dated 15 May 2015 refusing him admission to the United Kingdom, a decision which led to his removal on that date. The appellant had been living in the United Kingdom with his wife but went back for a short holiday to Hungary on his own on 10 May 2015. On 14 May 2015 he arrived at Luton Airport from Budapest but was refused entry to the United Kingdom and was removed on 15 May 2015, without being given an in country right of appeal. The appellant appealed this decision and his appeal was heard by Judge of the First-Tier Tribunal S Gillespie on 5 February 2016. He found that the immigration decision was not in accordance with the law and allowed the appeal to the extent that

the Secretary of State should make an immigration decision which carries an in country right of appeal if she deems it appropriate. This was in a decision promulgated on 5 February 2016.

2. The respondent requested permission to appeal to the Upper Tribunal and permission was granted by First-Tier Tribunal Judge Cruthers on 6 July 2016 who stated that it is arguable that Judge Gillespie's decision does not adequately disclose clearly the reasons for his finding that the appellant may be entitled to an in country right of appeal. He found that the appellant appeared not to have demonstrated that he is a person who holds a valid EEA family permit or can otherwise prove that he is resident in the United Kingdom, with reference to Regulation 27(2) of the 2006 EEA Regulations. The Upper Tribunal appeal was heard by Upper Tribunal Judge Chalkley on 1 September 2016. He found that Mr Banati has an out of country right of appeal which he has sought to exercise. He therefore set aside Judge Gillespie's decision. At paragraph 10 of Judge Chalkley's decision he states "Regulation 27(1) of the Regulations provides that subject to paragraphs (2) and (3) a person may not appeal under Regulation 26 whilst he is in the United Kingdom against an EEA decision (a) to refuse to admit him to the United Kingdom", which is the case in this appeal. His decision goes on to state that subparagraph (2) states that paragraph 1(a) to (aa) does not apply where the person is in the United Kingdom, but in this case Mr Banati was not in the United Kingdom. He was out of country and only had an out of country right of appeal. Judge Chalkley remitted the appeal to the First-Tier Tribunal.
3. Judge of the First-Tier Tribunal Agnew heard the appeal on 1 February 2017. Her decision states that Mr Banati's appeal is dismissed under the Immigration European Economic Area Regulations 2006 and is also dismissed under Article 8 of ECHR. She made reference to paragraph 19(1) of the Regulations which states that a person is not entitled to be admitted to the United Kingdom by virtue of Regulation 11 if his exclusion is justified on grounds of public policy, public security or public health in accordance with Regulation 21. She noted that the respondent refused the appellant admission to the United Kingdom under Regulation 19 on 15 May 2015, finding that he was not entitled to be admitted because his exclusion is justified on grounds of public policy, public security or public health in accordance with Regulation 21.
4. This appellant in Hungary was convicted of fraud offences on 23 February 2010 and sentenced to ten months imprisonment. He was convicted of fraud offences and sentenced to one year and four months imprisonment in Hungary on 7 March 2012. He was convicted of fraud offences and sentenced to two years imprisonment in Hungary on 24 September 2012. In December 2014 he was arrested in the UK for shoplifting and fraud offences but this was not taken any further.
5. Judge Agnew makes reference to Article 3(1) of the Directive 64/221 which states that grounds of public policy and public security are to be based exclusively on the conduct of the person concerned and that previous

criminal convictions are not in themselves to constitute grounds for taking such measures and can only be taken into account insofar as the circumstances which had given rise to that conviction were evidence of personal conduct constituting a present threat to a requirement of public policy. She referred to the lack of evidence before her about the appellant's state of health and economic situation and noted that she has evidence of his wife working in the UK but no evidence of her whereabouts and circumstances and has no evidence that the appellant is exercising Treaty Rights in the UK, apart from the appellant's and his wife's statements.

6. What Judge Agnew did was undertake an evaluation of the likelihood that the appellant would reoffend and what the likely consequences would be if he did. She balanced the risk of future harm against the need to give effect to the right of free movement. She noted that the appellant still maintained that he was not guilty of fraud offences and was not a criminal. I have seen a Deportation Notice against the appellant dated 21 May 2015. Judge Agnew found that the appellant's statement does not show any reflection or wish to rehabilitate but protests his innocence and blames others and she states that despite the appellant's history of criminal convictions he arrived in the UK in 2014 and he has not challenged the respondent's assertion that he was arrested for shoplifting and fraud. She finds that this indicates a strong propensity on the part of the appellant not to engage in rehabilitation but to reoffend and extract money from others by fraud. She therefore finds that the appellant has a propensity to reoffend and poses a risk to the public. She finds that he continues to present a genuine present and sufficiently serious threat to prospective victims of his offending. She finds that his exclusion from the UK is in accordance with Regulations. She finds that the exclusion is justified and proportionate when weighed against the necessity of maintaining effective immigration control and avoiding the threat to the public posed by the appellant's presence in the UK, and she finds that in this particular case there is no breach of Article 8 of ECHR.

### **The Hearing**

7. Much to my surprise instead of a representative appearing on behalf of the appellant he appeared himself with a friend who helped to translate what was said at the hearing to the appellant.
8. I asked the appellant how he had got into the United Kingdom when he has been excluded and he said he came in a car and just drove through. He said he had wanted to attend the hearing. This is an appellant who has no in country appeal. He has an out of country appeal. I explained that this is an error of law hearing and I felt he required representation but he told me that his representative had not turned up. I explained that I have to decide if there is an error of law in the First-Tier Judge's decision. I asked him what he thought the error of law was and he said that the decision is unfair as he is an EU citizen and has not had any convictions against him since 2012 and these were in Hungary.

9. I have considered the decision by Judge of the First-Tier Tribunal Agnew. I find that she has carefully explained the situation, has noted that the appellant only has an out of country right of appeal and has given proper reasons for finding that the appellant should be excluded from the United Kingdom. She has explained why this exclusion is in accordance with the Regulations and has taken into account the witness statements provided. She has also considered Article 8 of ECHR and finds that there is no breach of Article 8 and has given proper reasons for this finding.
10. I am presuming that the Presenting Officer will contact the immigration authorities informing them that the appellant is back in the United Kingdom in spite of the Exclusion Order.

### **Notice of Decision**

I find that there is no material error of law in First-Tier Tribunal Judge Agnew's decision promulgated on 8 February 2017.

The decision by First-Tier Tribunal Judge Agnew will stand.

Anonymity has not been directed.

Signed

Date

Deputy Upper Tribunal Judge Murray