



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DA/00632/2017

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 2 July 2018

Decision & Reasons Promulgated  
On 14 August 2018

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ROBERT [B]  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Mrs Pettersen, Senior Home Office Presenting Officer

For the Respondent: In person

**DECISION AND REASONS**

1. I shall refer to the appellant as the respondent and the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant, Robert [B], was born on 21 April 1985 and is a male citizen of Hungary. He claims to have arrived in the United Kingdom in April 2015 and has exercised Treaty Rights in this country. On 22 September 2017, the appellant was sentenced to 10 months imprisonment for false imprisonment. By a decision dated 12 October 2017, the Secretary of State decided to deport the appellant to Hungary. The appellant appealed to the First-tier

Tribunal (Judge Hillis) which, in a decision promulgated on 11 April 2018, allowed the appeal. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. I acknowledge that the decision of Judge Hillis is problematic. With some justification, the grounds of appeal challenge at [47-48] of the decision for failing to give clear reasons why the appellant's deportation was found by the Tribunal to be a disproportionate breach of Article 8 ECHR. Assessing the circumstances in the context of Section 55 of the Borders, Citizenship and Immigration Act 2009 the judge, whilst acknowledging that the children of the appellant are not British citizens, found that it would be disproportionate for the appellant to be removed to Hungary on his own. Puzzlingly, the judge went on to say that, "neither of the appellant's children are British citizens and their removal would not entail them being required to leave the European Union." That would appear to be a statement recognising the fact that, as the grounds of appeal assert, the family could leave the United Kingdom as a unit and relocate to Hungary. The whole analysis of Article 8 ECHR is a difficult to follow.
3. However, I find less merit in the remaining grounds of appeal. At first, the Secretary of State asserts that the judge has failed to make a specific finding as regards whether the appellant is a genuine present and sufficiently serious threat affecting one of the fundamental interests of society (Regulation 27(5)(c) of the 2016 EEA Regulations). The grounds do not, however, suggest that the judge has applied an inaccurate level of protection for the appellant as an EEA national in this instance. Rather, the Secretary of State is concerned that the judge has not made a positive finding to support his decision. I disagree. It will have been helpful if the judge had stated in terms that he found that the appellant did not offer a genuine present and sufficiently serious threat but I am in no doubt at all that that is what he has concluded in this case. At [41], the judge sets out the wording of Regulation 27(5). It is clear that he then goes on to apply that Regulation to the facts as he finds them in this appeal. I am well aware that an Appellate Tribunal such as the Upper Tribunal should not strain to uphold a decision in circumstances where the First-tier Tribunal has given incomplete or unclear findings. However, I consider that this is one of relatively few cases where the relevant legal test has been found by the judge to be satisfied even though he has not said so unequivocally in terms.
4. Secondly, the Secretary of State complains that the judge at [46] has not himself carried out an assessment of the conduct of the appellant. Instead, the judge has written this:

"There is no indication whatsoever the appellant was regarded by the learned Recorder who had the benefit of the independent professional pre-sentence report before him that the appellant was regarded as a high risk of re-offending or of causing serious harm to the public."
5. This was a case where there was very limited evidence before the judge. At [43], the judge noted that he did not have the pre-sentence report or the OASys 2 report which had been before the recorder. I observe that the judge had to decide the case on such evidence as was before him. Secondly, in those circumstances, I do not believe that the judge erred by placing weight on the fact that the sentencing remarks of the recorder (which were before the Tribunal) made no reference (as such remarks often do) to the

likelihood of the appellant re-offending or causing serious harm to the public. The grounds may be right in asserting that the judge should have made his own findings but there can be no doubt, having read the decision carefully, that Judge Hillis considered that there was no evidence before him that this appellant offered a genuine present and sufficiently serious threat to one of the fundamental interests of society. Such a conclusion is the inevitable outcome of the findings and observations which the judge has recorded in his decision.

6. In the circumstances, therefore, and notwithstanding the rather unsatisfactory nature of the Article 8 analysis, I am satisfied that it was open to the judge, on the evidence that was before him, to allow this appellant's appeal. In consequence, the Secretary of State's appeal is dismissed.

**Notice of Decision**

7. This appeal is dismissed.
8. No anonymity direction is made.

Signed

Date 2 AUGUST 2018

Upper Tribunal Judge Lane

**TO THE RESPONDENT**  
**FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 2 AUGUST 2018

Upper Tribunal Judge Lane