



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: DA/00395/2018

THE IMMIGRATION ACTS

**Heard at Cardiff Civil Justice Centre
On 25 April 2019**

**Decision & Reasons Promulgated
On 21 May 2019**

Before

**MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE GRUBB**

Between

**TOMAS GAZI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Fenney, instructed by NLS Solicitors (Cardiff).
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. The appellant is a national of the Czech Republic. Following his conviction for aggravated burglary he was on 16 March 2017 served with a Notice of Liability to Deportation in accordance with the Immigration (European Economic Area) Regulations 2016. On 28 May 2018 a Deportation Order was made against him under s 5(1) of the Immigration Act 1971 by reference to the EEA Regulations. A letter giving reasons for the decision was served on the same date.

2. The appellant had a right of appeal, which he exercised. His appeal was dismissed by Judge Powell in the First-tier Tribunal.
3. The appellant then sought permission to appeal on the basis that, as he was under 18 at the time he committed the offence of aggravated burglary, he fell within one of the exceptions to automatic deportation under s 32 of the UK Borders Act 2007: the exception is "Exception 2", contained in s 33(3) of the 2007 Act. Permission was refused by the First-tier Tribunal, but granted by Judge Chalkley in the Upper Tribunal, on the ground that the point was arguable.
4. The difficulty, as we explained to Ms Fenney at the hearing, is that although it is certainly true that a person who was under 18 at the date of the offence is exempt from the provisions of s 32 of the UK Borders Act, nobody other than the appellant and his legal representatives have ever asserted that that act applies to this case. This was not an automatic deportation under the 2007 Act, nor was any power under that Act invoked in the original Notice of Liability to Deportation, the Deportation Order or the letter of reasons for making the order. The process in this case was under the Immigration (European Economic Area) Regulations 2016 and the Immigration Act 1971, as we have said, those instruments contain no similar exemption.
5. Ms Fenney acknowledged before us that the appeal therefore could not succeed. Indeed it cannot. It is dismissed. The decision of the First-tier Tribunal stands.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 16 May 2019

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