



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/02874/2018

THE IMMIGRATION ACTS

Heard at The Royal Courts of Justice
On 29 October 2018

Decision & Reasons Promulgated
On 01 April 2019

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

GG
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Halim, Counsel, instructed by Fadiga & Co Solicitors

For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Hungary who was born on 22 July 1984. He arrived in the United Kingdom in 2009, and has resided continuously in this country since then, save for some visits early in that stay to Hungary. He does not claim to have been exercising treaty rights for a continuous period of five years whilst in this country.
2. Regrettably, between 12 July 2013 and 14 December 2017 he has been convicted on seven occasions for twelve offences. On 12 July 2013 he was convicted at Cheltenham Magistrates' Court for stalking a person causing serious alarm and

distress, for which on 16 August 2013 he was sentenced to a community order with a supervision requirement, a restraining order and a protection from harassment order until 15 February 2014. That sentence was varied three days later and the order was revoked.

3. Also on 12 July 2013 at the same court the appellant was convicted of sexual assault, that is, that he had intentionally touched a female and that this assault was racially/religiously aggravated. He was also convicted of harassment. For these offences, also on 12 August 2013 he was sentenced to a community order with a supervision requirement.
4. On 16 August 2013, the appellant was convicted, again at Cheltenham Magistrates' Court, of damaging property, for which he was ordered to pay £160 compensation.
5. On 19 August 2013 at Gloucestershire Magistrates' Court, he was convicted of using violence to enter a property and destroying/damaging property while his community order was in force. For these offences he was sentenced to eight weeks' imprisonment, suspended for twelve months with a supervision requirement. On 12 October 2013 at Cheltenham Magistrates' Court, this was varied to a total of 22 weeks' imprisonment.
6. On 11 October 2013, the appellant was convicted at Gloucestershire Magistrates' Court for stalking a person causing serious alarm/distress and to the commission of a further offence during the operational period of the suspended sentence. He was sentenced to a total of 22 weeks' imprisonment. A restraining order was also imposed.
7. The following year, on 16 July 2014 at Cheltenham Magistrates' Court, the appellant was convicted of pursuing a course of conduct which amounted to harassment. He was sentenced on 13 August 2014 to a community order with a supervision requirement and a restraining order protecting the victim from further harassment until 12 August 2015.
8. On 6 January 2015 at Gloucestershire Magistrates' Court, he was convicted of battery, for which he was conditionally discharged for twelve months.
9. Then, on 14 December 2017, the appellant was again convicted at Cheltenham Magistrates' Court for pursuing a course of conduct which amounted to harassment. A restraining order was imposed protecting the victim from harassment until 13 December 2019, and another suspended sentence of imprisonment, this time of eight weeks' imprisonment, suspended for two years, was imposed and the appellant was also ordered not to contact directly or indirectly the victim of this harassment.
10. Following this latest conviction, in a decision dated 22 March 2018 the respondent made a decision to deport the appellant. The respondent had previously written to the appellant on 1 March 2018, notifying him that it was intended to make a deportation order against him on grounds of public policy in accordance with

Regulation 23(6)(b) and Regulation 27 of the Immigration (EEA) Regulations 2016 but the appellant had not responded to that letter.

11. The very detailed decision letter, amounting to some 103 paragraphs over fourteen pages, is contained within the file.
12. The appellant appealed against this decision and his appeal was heard before First-tier Tribunal Judge Hodgkinson, sitting at Harmondsworth, on 5 July 2018.
13. In a very detailed Decision and Reasons promulgated just five days later, on 10 July 2018, Judge Hodgkinson dismissed the appellant's appeal. When giving his decision, Judge Hodgkinson imposed an anonymity direction, having treated the appellant as a vulnerable person. Neither party has asked for this anonymity direction to be lifted, and it is accordingly retained.
14. The appellant now appeals against this decision, leave having been granted by Upper Tribunal Judge Finch on 20 August 2018.
15. This appeal was before me on 29 October 2018, following which I gave consideration to all the submissions which had been made and reached a provisional decision. Regrettably, the file was then mislaid and so my decision was not then finalised and communicated to the parties. The file having now been relocated, this decision is now being promulgated. The Tribunal apologises to the parties for the delay.

Judge Hodgkinson's Decision

16. Judge Hodgkinson set out the appellant's case. Having been born in Hungary in 1984, and an only child, aged about 2 he moved with his family to Austria and then the following year to Canada, where he lived until about 1996 when he returned with his family to live in Hungary. He was happy in Canada and has Canadian citizenship as well as Hungarian. He finished schooling in Hungary, leaving aged about 20 in about 2004.
17. Between 2005 and 2008, he worked in Hungary for Nokia, and his parents purchased a flat for him to live in.
18. Having come to the UK with three colleagues in 2009 in order to live and work, for the next four years, he was exercising treaty rights in this country because he was either working or looking for work. However, he has not worked since 2013, and so has not acquired permanent rights of residence.
19. In May 2013, the appellant was arrested for criminal damage and was held in remand for three weeks, and there were other incidents as well (as recorded in the criminal history, which is set out above). He started drinking heavily and was also becoming depressed and ill. In August 2013, having been imprisoned and seen by the Mental Health Team, he was transferred to Bristol Hospital, where he remained for a month. He was sectioned under the Mental Health Act at Fromeside, Bristol

Hospital and was diagnosed with autism disorder. It appears now that he suffers from Asperger's syndrome and possibly also bipolar spectrum disorder.

20. He was supported by Social Services until March 2017, living in supported housing, but in March 2017, he chose to leave where he was living and was homeless. He slept in a tent in a park, that tent apparently having been provided for him by a church in Cheltenham. He was arrested on 20 February 2018 whilst sleeping rough and was detained. The deportation order was then made against him. Although he was granted immigration bail in principle on 14 June 2018, by a judge, he remained detained because the respondent had not provided him with a bail address.
21. The appellant has apparently fallen out with his parents because although he wants to remain in the UK, they have been trying to persuade him to return to live in Hungary, and had told him that they were going to sell the flat which they had bought for him in Hungary if he did not return. The appellant claimed that he had nothing to return to in Hungary anymore. Furthermore, he would not get any help in Hungary for his mental condition as he had not been there for ten years and had not contributed to the social security system there. He wanted to be allowed to remain in the UK.
22. The judge heard evidence from the appellant, treating him as a vulnerable adult within the meaning of the relevant Practice Direction, due to his mental health issues, which were set out in some detail within the decision.
23. The judge records, at paragraph 33 of his decision, that at the hearing before him, his Counsel had accepted that the appellant had not acquired the right to permanent residence in the UK and was accordingly only entitled to the lowest level of protection, namely that the respondent was required to establish that the appellant's deportation was justified on the grounds of public policy or public security pursuant to Regulation 23(6)(b) of the 2016 Regulations.
24. Judge Hodgkinson had previously set out the relevant Regulations, in particular Regulations 23 and 27, which provide as follows:
 - "23. -...
 - (6) Subject to paragraphs (7) and (8), an EEA national who has entered the United Kingdom ... may be removed if -
 - ...
 - (b) the Secretary of State has decided that the person's removal is justified on grounds of public policy, public security or public health in accordance with Regulation 27;
 - ...
27. - (1) In this Regulation, a 'relevant decision' means an EEA decision taken on the grounds of public policy, public security or public health.
- (2) A relevant decision may not be taken to serve economic ends.

- (3) A relevant decision may not be taken in respect of a person with a right of permanent residence under Regulation 15 except on serious grounds of public policy and public security.
- (4) A relevant decision may not be taken except on imperative grounds of public security in respect of an EEA national who -
 - (a) has resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision; ...
- ...
- (5) The public policy and public security requirements of the United Kingdom include restricting rights otherwise conferred by these Regulations in order to protect the fundamental interests of society, and where a relevant decision is taken on grounds of public policy or public security it must also be taken in accordance with the following principles -
 - (a) the decision must comply with the principle of proportionality;
 - (b) the decision must be based exclusively on the personal conduct of the person concerned;
 - (c) the personal conduct of the person must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, taking into account past conduct of the person and that the threat does not need to be imminent;
 - (d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;
 - (e) a person's previous criminal convictions do not in themselves justify the decision;
 - (f) the decision may be taken on preventative grounds, even in the absence of a previous criminal conviction, provided the grounds are specific to the person.
- (6) Before taking a relevant decision on the grounds of public policy and public security in relation to a person ('P') who is resident in the United Kingdom, the decision maker must take account of considerations such as the age, state of health, family and economic situation of P, P's length of residence in the United Kingdom, P's social and cultural integration into the United Kingdom and the extent of P's links with P's country of origin.
- ...
- (8) A court or Tribunal considering whether the requirements of this Regulation are met must (in particular) have regard to the

considerations contained in Schedule 1 (considerations of public policy, public security and the fundamental interests of society etc.).”

25. Judge Hodgkinson had also set out within his Decision the relevant extracts from Schedule 1, but I do not need to set these out below.
26. Judge Hodgkinson then summarised all the evidence, including in particular a psychiatric report from Dr Bose dated 22 June 2018, and a probation report written by a Mr Donald. He also referred to a report of a consultant forensic psychiatric, Dr Bradley Hillier.
27. The judge had particular regard to Dr Bose’s report, from which he was satisfied that the appellant’s criminal offending “is directly linked to his Asperger’s syndrome and to his bipolar spectrum disorder” (see at paragraph 36). The judge set out very large extracts from this report, but before doing so summarised, at paragraph 37, what Dr Bose concluded, as follows:

“37. Dr Bose’s report essentially describes a history for the appellant, in the United Kingdom, in which there have been various offences committed by the appellant, some of those offences being of a sexual and harassing nature towards women, arising from the appellant’s inability, due to his conditions, to have any idea as to how in reality to establish relationships with women”.

He also set out large extracts from the report of the probation officer.

28. Having set out these extracts, the judge records that he had asked the appellant during the hearing whether he could speak Hungarian, to which the appellant replied that he could although he was a little rusty with the language and did not wish to speak Hungarian because he was living in this country and therefore wanted to speak English. However, the judge concluded that he does speak Hungarian and could speak Hungarian “were he to return to Hungary” (at paragraph 39).
29. At paragraph 40, he referred to the unchallenged evidence that the appellant had had an argument with his parents in Hungary over the telephone two years previously because they had tried to persuade him to return to Hungary and that he had not had any contact with them since, and it was uncertain whether or not he would seek further contact with his parents were he to be removed to Hungary.
30. At paragraph 42, Judge Hodgkinson set out the question he considered he had to consider, as follows:

“42. I proceed to consider the question of whether the appellant's conduct represents a genuine, current and sufficiently serious threat affecting one of the fundamental interests of society. In doing so, I am required to take into account his past conduct and the fact that the threat does not need to be imminent (Regulation 27(5)(c))”.
31. Then, at paragraphs 43 and 44, the judge applied the Regulations to this appellant's individual circumstances as follows:

“43. The appellant’s last conviction was in December 2017, with reference to harassment offences committed between early February 2017 and late April 2017. A restraining order was made against him and, as I understand it, it was an offence involving harassment against a woman. Such propensity is, of course, referred to in Dr Bose's report. As indicated, the appellant has various additional offences, going back to 2013. The fundamental interests of society are defined in Schedule 1 to the Regulations. They include the maintenance of public order, preventing social harm, the removal of an EEA national with a conviction, including where that person's conduct has caused, or is likely to cause, public offence, maintaining public confidence in the ability of the authorities to take such action, combating the effects of persistent offending and protecting the public. Whilst I accept that the appellant is, in a sense, blameless for his offending, bearing in mind his personality disorders, I am satisfied that his criminal offences are such as to affect various of the fundamental interests of society.

44. Additionally, bearing in mind the number of convictions between 2013 and 2017, I am satisfied that he has demonstrated persistent offending. There is no evidence before me which causes me to conclude that he is unlikely to offend in the future, were he permitted to remain in the United Kingdom. Based upon the available evidence, I find as a fact that the offending is likely. In arriving at such conclusion, I bear in mind that Dr Bose indicates that the appellant's offending behaviour *could* be reduced, if the appellant were given the right support. He does not state that it is *likely* to be reduced or eliminated. I find that the evidence before me does not establish that, on balance, such relevant or requisite support would be available to the appellant in the United Kingdom, bearing in mind that he has committed various offences since 2013, when certain elements of support have been available to him at various times. Indeed, as noted in the probation officer's letter, the provision of suitable treatment and support for the appellant is problematic and it would be difficult to obtain accommodation for him, given his desire to be away from other people”.

32. At paragraph 45, the judge gave his reasons for finding that notwithstanding that the appellant speaks fluent English and wishes to remain in this country, bearing in mind his history in this country, his level of integration in this country “is very limited indeed”.

33. At paragraph 46, the judge refers to submissions that had been made referring to the lack of appropriate treatment for the appellant in Hungary which would be necessary to deal with his mental health/personality disorder problems and concluded that there was certainly “a *prospect* of treatment and care in the United Kingdom which would not be available to him in Hungary” (at paragraph 46). However, the judge also took account (at paragraph 47) of the fact that notwithstanding what was available to the appellant or might be available in this country, “for the last two months of his time in the United Kingdom, the appellant was not in receipt of any care package of any kind; rather, he was living on his own in a tent, because he found this more palatable than residing in a hostel”. The judge also took account of Dr Bose’s indication that treatment plans “*might*” be beneficial to the appellant but noted that “his report is seriously qualified by comment such as: ‘If

given the right support, his offending behaviour *could* be reduced” and that Dr Bose had added that the appellant “*could*” have been involved with psychological therapy or social skills groups which *may* have made him less likely to offend.

34. Then, at paragraph 48, the judge took account of the fact that although the appellant had been receiving help from mental health services in this country and some of this had appeared to result in some temporary improvements “none of [this help] appear to have resulted in any kind of lasting improvement in the appellant’s circumstances or mental health”.
35. The judge considered that it was “wholly unclear that the situation would be any different, were the appellant to be released from detention and allowed to remain in the United Kingdom”. He continued by stating as follows:

“As indicated, Asperger’s syndrome is difficult to treat and the appellant does not appear to have any current interpersonal relationships in the United Kingdom which might assist him. By way of contrast, I entirely accept that, were he to be removed to Hungary, he may have no potential support network of any kind, excepting his parents, with whom he adamantly indicates he wants nothing to do with him”.
36. At paragraph 49, the judge states that he took all these factors into account when assessing proportionality. Then, at paragraph 50, he reiterated that he accepted that “it is not his fault that he has offended, it being as a result of his mental health problems”. I note with regard to this observation that while the appellant’s moral culpability for his offending may be reduced, nonetheless he has been convicted of criminal offences which he could or should not have been had the court concluded that he lacked the capacity to be responsible for his actions.
37. In any event, after having accepted that the offending was not the appellant’s fault, the judge continued at paragraph 50 as follows:

“Nevertheless, his offending has clearly caused significant and material distress to certain victims and that should not be downplayed. For the reasons I have indicated, I find that there is a material prospect that the appellant will commit similar offences in the future”.
38. The judge then found that the appellant could and would speak Hungarian were he to be removed to Hungary and that it is at least conceivable that he would seek further contact with his parents although this was unclear. The judge also repeated his finding that his level of social integration in this country was very limited.
39. Then, at paragraph 52, when considering proportionality under the Regulations, he considered the appellant’s state of health and his disabilities but noted that, although he did not appear to like Hungary, he was a Hungarian national and had spent a number of years in his home country prior to arriving in the UK.
40. Although at paragraph 53 the judge indicated that there would be significant obstacles to his integration into Hungary and “*possibly* very significant obstacles”, nonetheless “I reiterate that he is no stranger to Hungary and travelled to the United

Kingdom in 2009 for the purpose of seeking employment, he having previously been employed in Hungary". Accordingly, "I have assessed his ability to reintegrate in Hungary in the context of his mental health problems".

41. Applying the principles of the Regulations to the appellant's particular circumstances and in particular his mental health issues, the judge found that the decision to deport him was not disproportionate and accordingly, for the reasons he had given, despite having "significant sympathy for the appellant" (at paragraph 55) he dismissed the appeal.

Grounds of Appeal

42. The grounds complain first that Judge Hodgkinson's findings of fact were perverse. The judge having found at paragraph 48 that there would be no support network within Hungary, and having accepted at paragraph 46 that mental health services in Hungary are "essentially non-existent, or at the very least, the appellant would be unable to access them" it is asserted, at paragraph 10 of the grounds, that "there was no basis in the evidence before him for the FtTJ to conclude that A could continue to receive adequate support on return to Hungary".
43. It is then submitted that "he would face destitution and severe harm as a result of his serious mental health conditions, which would amount to 'very significant obstacles' to integration".
44. It is then submitted that the judge failed to consider that after his hospitalisation the appellant had "mostly abstained from offending, with the exception of the most recent events in 2017". In light of the judge's findings, the judge "failed to consider the issue of fairness properly with regard to the evidence ... especially in light of [the appellant's] particular exceptional compassionate circumstances".
45. Finally, the judge had erred in finding a high risk of reoffending "when the prospect of rehabilitation is very much accepted by [the appellant] and supported by professionals" and that "given his exceptional circumstances [the appellant] should be afforded the opportunity to undertake rehabilitation, which is only readily available to [the appellant] in the UK".
46. In oral submissions, Mr Halim stressed the clear link between the appellant's criminal offending and his mental condition. He relied strongly on the possibility of rehabilitation in the UK set against the very significant obstacles which the appellant would face on return to Hungary. Although he did not argue that the appellant was "blameless" nonetheless the judge's failure to consider the prospect of rehabilitation and treatment had been wrong.
47. In particular, the judge was wrong when stating within paragraph 44 that there had been no evidence that the appellant was unlikely to reoffend. This was contrary to the evidence that there had been a clear improvement in 2013 and 2015. Notwithstanding that the last offending had been in December 2017, the evidence was that it could be reduced. He had been more disturbed in 2013 but the treatment

then had been beneficial. The report from the Probation Services was that he had not received the last support and that the provision of services now was “problematic”. It was the view of the Probation Services that he had been let down or, because of the way the Health Service is organised, he had fallen between various categories and had not received the best support which might have been available.

48. Accordingly, the evidence showed first that the appellant had responded well to treatment, both in 2013 and 2015 and had kept most of his appointments.
49. In the context of EU law, the prospect of rehabilitation was relevant to whether or not an applicant is a present threat, but the judge got the evidence muddled. In particular, the judge was wrong to say that there was no evidence that the appellant would be successfully treated in the UK. There was evidence of a clear distinction between what had happened before 2013 and his pattern of behaviour after 2013. It was clear there had been a marked improvement.
50. Further, the judge was wrong to find that the appellant presented an unacceptably high risk of reoffending. It was the appellant’s case that the risk was not sufficiently high to justify this conclusion.
51. The judge had also been wrong to find that there was no realistic prospect of rehabilitation in this country; he had reached this conclusion by taking a false view of the evidence. He had been wrong to find that his treatment had been “problematic” or that the appellant had fallen between several categories. The evidence was that certainly in 2013 and 2015 he had engaged with the support available in this country, which suggested that he did respond to interventions which succeeded in reducing his offending. So, his history suggested that he was prepared to engage with the help that was available to him. To say that the help available was “problematic” was not the same as saying it was not available. The judge failed to understand properly what the Probation Service was saying.
52. Mr Halim also submitted that as a discrete error of law the judge was required to make a finding as to whether there were very significant obstacles preventing his integration into Hungary and that it was not sufficient to find that there were “possibly” very significant obstacles as he did at paragraph 53. If there were very significant obstacles, that would potentially be dispositive of the appeal. To say “possibly” left the door open.

The Respondent’s Submissions

53. On behalf of the respondent, Mr Duffy asked the Tribunal to note first of all that the question of how integrated the appellant was in the UK was not a weighty factor in circumstances where he had no right of permanent residence. So, the main question was whether or not he was reasonably likely to commit further offences. Neither Dr Bose nor the Probation Services could say that the risk was sufficiently low as to be acceptable. For whatever reason, short of being sectioned, the appellant had not engaged sufficiently with the help available to prevent him reoffending. Notwithstanding the support which had been available, he chose to live in a tent.

54. So, the question really was one of proportionality. How, in the circumstances of this case, could it not be proportionate to remove him to Hungary?

Discussion

55. I have set out the judge's decision in such detail above because it is clear, in the judgment of this Tribunal, that he gave very careful consideration to every aspect of the appellant's case. He attempted, conscientiously, to apply the Regulations to the appellant's individual circumstances and notwithstanding the sympathy which he felt (and expressed) for the appellant's mental difficulties, he nonetheless found (on the basis of the evidence before him) first that there was a sufficiently high risk of the appellant continuing to reoffend in a manner which was harmful to the community as to justify his removal and secondly, that in all the circumstances it was proportionate to remove him. With regard to proportionality, while the judge was concerned about the difficulties which the appellant might face on return to Hungary, he also had in mind that notwithstanding that help was available to some extent in this country, the appellant had recently chosen (and continued to choose) not to avail himself of the help which was offered, the consequence being that he continued to reoffend. The judge considered the appellant's prospects in this country contrasted with what might happen on return to Hungary, but had in mind also that the appellant's level of integration in this country was low. These decisions are never easy, but this was a decision for the judge to take, and, in the judgment of this Tribunal, the findings which the judge made do not come close to being perverse.
56. With regard to the argument that the judge failed to have adequate regard to the virtual lack of mental health services in Hungary, it is clear that in fact the judge did consider this, but concluded that nonetheless it was still proportionate to return the appellant, in particular having regard to his failure to engage with the help that was available in this country. Matters of weight are for a judge; in this case, the judge reached findings on the facts which were open to him, and considered proportionality in light of those findings. The most relevant facts were that this appellant has been a persistent offender who has caused significant distress to victims (in particular women) and who would be very likely to continue offending in the future. The judge was entitled to find that his personal conduct, in the words of Regulation 27(5)(c), represented "a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society", and further, having regard also to the appellant's personal circumstances, that his removal was proportionate.
57. In a detailed and thorough Decision, demonstrating a conscientious application of the Regulations to the personal circumstances of the appellant, the judge reached a balanced decision which was open to him on the material before him.
58. It follows that, there being no material error of law in Judge Hodgkinson's decision, this appeal must fail.


Decision

There being no material error of law in the decision of the First-tier Tribunal, this appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

A handwritten signature in black ink that reads "Ken Craig". The signature is written in a cursive style with a long, vertical tail on the letter 'g'.

Upper Tribunal Judge Craig

Dated: 14 March 2019