



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/08312/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 9<sup>th</sup> July 2018

Determination Promulgated  
On 12<sup>th</sup> July 2018

Before

**UPPER TRIBUNAL JUDGE COKER**

Between

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

And

**TUDOREL IANCU**

Respondent

**Representation:**

For the Appellant: Ms K Pal, Senior Home Office Presenting Officer  
For the Respondent: no appearance either in person or by legal representative

**DETERMINATION AND REASONS**

1. The Secretary of State was granted permission to appeal the decision of the First-tier Tribunal on the grounds that the First-tier Tribunal judge had considered the appeal by Mr Iancu as if it were an appeal against a deportation order rather than an appeal against a decision to remove him.
2. Mr Iancu was served with a copy of the grant of permission and the notice of hearing at his last notified address. The Notice of hearing has not been returned to the Upper Tribunal. Mr Iancu had not arrived at the Tribunal by 11am and no explanation had been received for his absence and no application for an adjournment made. I proceeded to hear the case in his absence.
3. The SSHD took a decision to remove Mr Iancu because he had not provided any evidence he was exercising Treaty Rights. He appealed but did not

attend the hearing before the First-tier Tribunal. The First-tier Tribunal Judge reached a decision to allow his appeal under the mistaken impression that the appeal was against a decision to make a deportation order. The First-tier Tribunal Judge materially erred in law and I set aside the decision to be remade.

4. Mr Iancu has not filed with the Tribunal any evidence that he is exercising Treaty Rights either now or at the time of the decision. The burden of proof is upon Mr Iancu and he has failed to discharge that burden.
5. I dismiss Mr Iancu's appeal against the decision to remove him from the UK.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision and re-make the decision in the appeal by dismissing Mr Iancu's appeal against the decision of the SSHD to remove him from the UK.

Date 9<sup>th</sup> July 2018



Upper Tribunal Judge Coker