



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

Appeal Number: DA/00502/2015

THE IMMIGRATION ACTS

Heard at Field House

On 11th April, 2016

**Decision & Reasons
Promulgated**

On 18th July 2016

Before

Upper Tribunal Judge Chalkley

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ADRIAN WLADYSLAW HORWAT
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr E Tufan, a Senior Home Office Presenting Officer

For the Respondent: No Appearance

DECISION AND REASONS

1. The appellant in this appeal is the Secretary of State for the Home Department and to avoid confusion I shall refer to her as being “the claimant”. The respondent is a citizen of Poland born on 3rd February, 1995.

2. On 17th October, 2014 the respondent was convicted at Basildon Crown Court of two counts of supplying a controlled drug, namely class A crack cocaine, and one count of possession with intent to supply a controlled drug, namely class B cannabis resin. He was sentenced on 17th November, 2014 to two years' imprisonment in a young offenders institution on each count to run concurrently.
3. The claimant made a decision to make a deportation order on 19th October, 2015 and the respondent appealed to the First-tier Tribunal. His appeal was heard by First-tier Tribunal Judge levins on 17th February, 2016 and the judge purported to allow the appeal on the basis that the respondent had been in the United Kingdom for a continuous period of at least ten years.
4. The claimant sought and obtained permission to appeal on the basis that the judge had failed to apply the decision of *MG (prison-Article 28(3)(a) of Citizens Directive) Portugal* [2014] UKUT 392. The period of ten years' residence must be continuous and must be counted backwards from the date of the deportation decision. In the respondent's case there is of course a period during which he was in prison and so the ten years has to be counted back from 17th November, 2014.
5. The respondent entered the United Kingdom on either 3rd or 4th February, 2000. He entered with his family and his father claimed asylum, but the application was refused and an application to appeal to the Immigration Appellate Authority was unsuccessful. Neither the respondent nor other family members have ever been granted leave, but on 1st May, 2004 Poland joined the European Union.
6. It is possible therefore that the appellant *may* fall within the category of those who are entitled to remain in the United Kingdom on the basis of their ten years' continuous period of residence, provided of course they meet the requirements on integration. Numerous findings are made between paragraphs 40 and 49 of the judge's determination, but nowhere does the judge apply his mind to the question of the appellant's integration or make findings sufficient to undertake an analysis. I have concluded, therefore that the matter will have to be remitted to the First-tier Tribunal in order that evidence can be heard on the question of the appellant's integration and a full assessment made.
7. The matter should be heard by any First-tier Tribunal Judge other than Judge levins. A Polish interpreter will be required and I believe that a time estimate of two hours is adequate. The matter should not be listed for hearing before 1st June.

Upper Tribunal Judge Chalkley
18th July 2016