



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DA/00270/2017

THE IMMIGRATION ACTS

Heard at Field House  
On 30 August 2018

Decision & Reasons Promulgated  
On 12 September 2018

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

F V  
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Bonavero, instructed by Kilby Jones Solicitors LLP  
For the Respondent: Mr T Wilding, a Senior Home Office Presenting Officer

DECISION AND REASONS

*Anonymity.* Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order in this appeal. The appellant will be referred to in these proceedings only as F V. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or indirectly. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Bart-Stewart, who in a lengthy examination of the question of EEA deportation, unaccountably failed to direct herself properly with reference to the different standards applied to removal, depending on whether or not a person has permanent

residence as set out in Regulation 27 of the Immigration (European Economic Area) Regulations 2016.

2. As Mr Bonavero has observed, that was the core finding which was required of the First-tier Judge and should have proceeded any consideration of whether the appellant could lawfully be removed.
3. I am not persuaded by Mr Wilding that it is appropriate simply to say that if the appellant's offence had been considered at the higher standard of protection, on the basis that he was entitled to a permanent right of residence, the outcome would have been the same.
4. Accordingly, there is no alternative but to remit this appeal for rehearing afresh in the First-tier Tribunal on a date to be fixed, with no findings of fact or credibility preserved.
5. The appeal has not thus far been anonymised. I make an anonymity order and the appellant will henceforth be referred to only as FV. Any disclosure by either party of the identity of the appellant or members of his family and in particular his children may well be considered a contempt of court.

### **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. The decision in this appeal will be remade on a date to be fixed.

Signed: *Judith A J C Gleeson*  
Upper Tribunal Judge Gleeson

Date: 9 September 2018