



**Upper Tribunal
(Immigration and Asylum Chamber)
DA/00450/2017**

Appeal no:

THE IMMIGRATION ACTS

**At Royal Courts of Justice
On 05.02.2018**

**Decision Promulgated
On 08.02.2018**

Before:

Upper Tribunal Judge John FREEMAN

Between:

Aleksandr POLOZOV

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

The appellant in person
Mr D Clark for the respondent

DECISION AND REASONS

- 1.** This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Mj Hembrough), sitting at Harmondsworth on 11 September 2017, to dismiss a deportation appeal by a citizen of Lithuania, born 1 May 1985.
- 2.** Permission to appeal was granted on the basis of what had happened at the hearing, when the judge had gone ahead with it in the appellant's absence. The decision under appeal had been made on 31 July: there is no endorsement on the copy before me to show when it was served on the appellant in detention, nor before the judge who extended time by the one day needed, assuming he received it the same day, to cover the notice of appeal he gave on 15 August. On the 17th notice of hearing was given for 11 September.

NOTE: (1) no anonymity direction made at first instance will continue, unless extended by me.

(2) persons under 18 are referred to by initials, and must not be further identified.


- 3.** The next thing that apparently happened, on 30 August, was that the appellant faxed the First-tier Tribunal to ask for an adjournment, so he could get his employment records from the Revenue, who had said it would take them up to 40 days. This was refused the same day, on the basis that “The decision was served on 31st July – the Appellant has thus had 6 weeks to prepare, which is sufficient”. The next day a similar request was refused, on the same basis.
- 4.** The appellant’s account of what happened next was that at 0600 on the morning of 1 September, which was a Saturday, staff at the detention centre woke him up, and told him he was being transferred to London for the hearing, in ten days’ time. Depressed by his dealings with the Tribunal, he refused to go: the judge noted this at paragraph 21, which disposes of the point about lack of a production order made in the grant of permission.
- 5.** The other point in the grant refers to the Tribunal’s duty to help unrepresented appellants. While on the information before the hearing judge this appellant had simply refused to co-operate with the transport arrangements, so that he could ask for that help at the hearing, it is worth looking a little closer at what had gone on.
- 6.** Although the decision letter itself bears no endorsement as to service, the enclosures are listed as “Confirmation of conveyance, ICD.4348 disclaimer”. Those same documents are recorded as signed for by the appellant in another (J1 in the appeal bundle) dated 16 August. It follows that, far from this appellant sitting on his hands between 31 July and 30 August, when he first asked for an adjournment, he had given notice of appeal the same day he got the decision letter, and had taken steps to prepare his case within the next fortnight, subject to the co-operation of the Revenue.
- 7.** I don’t in the least blame the judge for going on to deal with the case on the information before him as he did: Harmondsworth is an extremely busy centre, and he will have had a number of other appellants present and ready to get on with their cases. The only thing that alerted me to the possible need to go into it in greater detail was the first adjournment decision giving the delay between 31 July and 30 August as six weeks, which could not be right.
- 8.** Finding out what it had really been made it clear that this appellant hadn’t had a fair hearing from the First-tier Tribunal as a whole: his adjournment request had been twice refused on the basis of a wrong time-scale, and without taking full account of the reason he had made it, and the likely delay involved. It might well be said that the appellant should even so have come to the hearing, and made it again; but in the circumstances his discouragement was understandable, and the result of what (again understandably for no doubt busy duty judges) was an unjustified assumption as to what it had been.
- 9.** That is why I have decided that the appellant is entitled to a fresh hearing before another first-tier judge: he says he now has the evidence of his employment history which might show he had established the necessary five years’ qualifying residence for a permanent right, which would have required the Home Office to show, not just that his conduct

presented a 'genuine, present and sufficiently serious threat' to justify his removal, bearing in mind the principles in reg. 27 (5) of the [Immigration \(European Economic Area\) Regulations 2016](#), but that overall there were the '*serious* grounds of public policy ...' required by reg. 27 (3).

10. Since this appellant is now serving his first custodial sentence, one of 14 weeks' imprisonment, passed on 3 July 2017, consecutive to two suspended sentences received earlier last year, it must be open to argument either way as to whether such grounds exist in his case, which will be for the next hearing judge to decide. The appellant should send a copy of his Revenue records to the Home Office Presenting Officers' Unit, at the address given on the notice of hearing, as well as to the Tribunal, as soon as possible. If arrangements can be made for the fresh hearing to take place before the appellant is sent back up to his detention centre in Lincolnshire, then so much the better.

Appeal allowed: first-tier decision set aside

Fresh hearing in the First-tier Tribunal, not before Judge Hembrough

A handwritten signature in black ink, appearing to be 'JLR', written in a cursive style.

(a judge of the Upper
Tribunal)