Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00594/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgation**
On 4 October 2018	**On 16 October 2018**

Before

THE HONOURABLE LADY RAE
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
DEPUTY UPPER TRIBUNAL JUDGE JORDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Appellant

and

MR MANTAS SVETLAUSKAS
(ANONYMITY DIRECTION NOT MADE)
Respondent

Representation:

For the Appellant: Mr C Avery, Home Office Presenting Officer
For the Respondent: Mr M Sowerby, Counsel, instructed by Charles Simmons Immigration Solicitors

DECISION AND REASONS

The Secretary of State has appealed against the determination made by the First-tier Tribunal in the case of Mr Mantas Svetlauskas, DA/00594/2017. I shall refer to Mr Svetlauskas as ‘the appellant’, as he was before the First-tier Tribunal.

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The appeal came before First-tier Tribunal Judge Randall, whose determination was promulgated on 19 July 2018. The Appellant, a Lithuanian national, was born on 31 October 1990. The relevant decision, made by the Secretary of State on 25 February 2017, was to make a deportation order against him under the 2016 EEA Regulations. The judge determined the appeal by allowing it under the 2016 Regulations, finding that the appellant had acquired a permanent right of residence and consequently his case fell to be considered under the second level of the three-level scheme set out in the Regulations when dealing with European citizens who have been in the United Kingdom for varying periods of time. In such cases, removal is permitted only on '*serious grounds of public policy*'.

The background to the case is that the Appellant's mother and father arrived in the United Kingdom in 2000. It does not appear to be controversial that the father worked as a lorry driver and then from 2002 onwards as a carpenter. The appellant arrived in the United Kingdom in 2002. He was then aged 12. The decision letter, which was made on 25 September 2017, appears to acknowledge that when the appellant arrived in the United Kingdom he was doing so as the dependant of his father, who was self-employed in the United Kingdom. The fact that the appellant's father as a non-European national had been granted leave to remain prior to 24 January 2004 clearly suggests that the father was working lawfully in the United Kingdom and so, in due course on 24 January 2004, the appellant himself was granted leave as a dependant of a Lithuanian citizen who was working in the United Kingdom in a self-employed capacity. He was given leave to remain until 25 January 2007.

The judge accepted that the starting-point for the consideration of the claim was May 2004 but, for our purposes, we do not see how it could have been then. The accession of Lithuania into the European Union took place in May 2004 but, importantly, paragraph 8, Schedule 6 to the 2016 EEA Regulations, which itself reflected conventional European and United Kingdom law, contained retrospective provisions in relation to those who had prior leave during the period leading up to the accession. It was retrospectively acknowledged that such prior leave could count towards the critical periods necessary to establish a permanent right of residence. Paragraph 8 was conditional but there is no suggestion that the conditions were not met.

The consequence, it seems to us, is that when the Appellant arrived in the United Kingdom as a dependant of a working father he himself began to accumulate the time necessary in order to acquire a permanent right of residence. Consequently, by 2007, and it is not clear to us whether it was either before accession or after accession, he had spent five years in the United Kingdom lawfully and the accession provisions permitted that time to count towards the relevant five-year period.

It follows from this that he acquired a permanent right of residence sometime in 2007. That would have been consolidated after a further five years by reason of his continued presence in the United Kingdom until 2012, at which point he would have been just over the age of 21.

The events relevant for our purposes all post-dated his acquisition of a permanent right of residence and indeed his having spent 10 ten years in the United Kingdom. The relevant events were that, on 13 October 2016 at Bexley Magistrates' Court, he made his first appearance and was subsequently sentenced to a period of 21 months' imprisonment but it appears that he was already in custody on that occasion. Consequently, the offending took place at a time when he had been entitled to the protection of the EEA Regulations and in particular the ultimate, as it were, level of protection which is afforded by ten years' residence, namely, that removal is limited to *'imperative grounds of public policy'*.

The Secretary of State does not suggest that the sentence that was imposed, the 21 months' imprisonment, represents the *serious* grounds, far less the *imperative* grounds, which arise in the case of somebody who has lawfully been in the United Kingdom for ten years. In these circumstances, the decision made by the Secretary of State to deport him on the basis of his *not* having acquired a permanent right of residence was wrong. Further, the judge in the First-tier making a finding that he had acquired a permanent right of residence, whilst he may have been wrong as to the date, was not wrong in the substance of his decision.

Accordingly, the appeal of the Secretary of State is dismissed and the determination of the First-tier Tribunal shall stand.

DECISION

The appeal of the Secretary of State is dismissed.

The decision of the First-tier Tribunal allowing the appeal of Mr Svetlauskas against the Secretary of State's decision to make a deportation order shall stand.

ANDREW JORDAN
DEPUTY JUDGE OF THE UPPER TRIBUNAL
10th October 2018