Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00563/2018

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice	**Decision & Reasons Promulgated**
On 28th January 2019	**On 18th February 2019**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR ARNUS ADOMAVICIUS

Claimant/Respondent

Representation:
For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer
For the Claimant/Respondent: Ms J Rothwell of Counsel instructed by Jein Solicitors

DECISION AND REASONS

1. The claimant, born on 15th August 1994, is a citizen of Lithuania.

2. On 7th August 2018 the Secretary of State made a deportation order in respect of the claimant on the basis that it was justified on the grounds of public security because of his criminal history, the decision being taken under Regulation 21 of the Immigration (European Economic Area) Regulations 2006. Detailed reasons for the making of such an order are set out in that decision.

3. The claimant has a record of criminality, commencing with possession of cannabis in 2009 culminating in a fourteen months' imprisonment imposed for an offence of actual bodily harm on 11th January 2018. Such an offence was committed against his partner a restraining order had been in place.

4. The appellant sought to appeal against that decision which appeal came before First-tier Tribunal Judge Baldwin the hearing on 5th October 2018.

5. The Judge proceeded to consider the matter on the basis that the claimant having resided in the United Kingdom for more than ten years enjoyed the protection that he could only be removed on the basis of imperative grounds of public security. The Judge did not find that the offending met that high threshold.

6. Little reason or justification is given in the determination for coming to that conclusion, other than the suggestion in paragraph 23 of the determination, that Mr Bassi, the Home Office Presenting Officer, confirmed that the relevant test was one relating to imperative grounds of public security. The appeal was allowed.

7. The Secretary of State sought to challenge that decision on the basis that the relevant test was not one relating to imperative grounds and that no concession on that matter had been made by the Presenting Officer. Reliance as placed indeed upon the Presenting Officer's minute attached to the grounds. The grounds contended that the claimant had the lowest level of protection afforded to him by virtue of Regulation 21, namely he could only be removed on the grounds of public policy, public security or public health but he did not have permanent residence such as to bring him into the area of "serious grounds of public policy or public security" let alone that of imperative grounds. It is contended therefore that the very basis of consideration was flawed.

8. Permission to appeal was granted on that basis and thus the matter comes before me to determine the issue.

9. I have regard to the Presenting Officer's note of the hearing, the relevant paragraph being as follows:

> "The Judge raised the point that as the A had been in the UK since 1996 and for more than ten years before the decision to deport was made he needs to consider whether the A should be deported on imperative grounds. The PO replied on the comprehensive RFRL in its entirety and submitted that the Home Office case is that A should be deported on grounds of public policy, that reasons for that had been given in the RFRL at paragraphs 8 to 33. PO was asked in any case to make submissions on the imperative grounds test in the alternative. The Judge finds the Home Office had made an error that the test is on grounds of public policy."

10. As I indicated the decision letter of the Secretary of State is detailed in its response to the issues. It noted that the claimant had arrived in the United Kingdom on 7th December 1996 and had claimed asylum as the dependant of his mother [D]. The application was refused on 11th July 1998 and a subsequent appeal dismissed. The claimant's mother was removed to Lithuania on 20th February 1998 but re-entered the United Kingdom on 20th March 1998. She applied for asylum but that was dismissed on 19th March 1999.

11. In November 2004 the claimant was included as a dependent upon his mother's application for family ILR on 21 March 2005 and was granted indefinite leave to remain in the United Kingdom.

12. It was not accepted, however, that the claimant had been resident in the United Kingdom in accordance with the EEA Regulations. He has provided no evidence of residence or of exercising treaty rights. It was not considered that the fact that he had been granted indefinite leave to remain outside the Immigration Rules could be accepted as evidence that he had acquired a permanent right to reside under the 2016 EEA Regulations.

13. It was noted that Lithuania acceded to the EU on 1st May 2004. It was contended that the claimant had failed to provide documentary evidence that his parents were exercising treaty rights from 2004. A letter from his mother dated 10th August 2018 was that she was receiving State benefits as she was raising her children and had only registered her business on 24th January 2014.

14. The claimant provided payslips for work as from 2017. The decision states in terms therefore, "it is therefore not accepted that you have acquired a permanent right to reside under the 2016 EEA Regulations".

15. As Mr Melvin submitted that if the mother was not exercising treaty rights it is difficult to imagine that the claimant was. It is to be noted that he seemed to have been a student for some time during that period but there was no indication of his having comprehensive sickness insurance at the time.

16. Ms Rothwell does not concede the point that the claimant does not fall to have that protection but accepts that the Judge has proceeded on an incorrect assumption that that matter was conceded by the Secretary of State. Accordingly there has been little analysis of that issue or findings made on the substantive consideration. She indicates that further documentation may clarify that issue.

17. In all the circumstances I find that the Judge proceeded to consider the matter on the misunderstanding of fact namely whether a concession had been made in relation to imperative grounds of public security. I find that no concession had been made.

18. In that situation the appeal before the Upper Tribunal is allowed to the extent that the decision of the First-tier Tribunal is set aside to be remade.

19. Having regard to the Senior President's Practice Direction I consider that the matter should be remitted to the First-tier Tribunal for a de novo hearing to be conducted.

Notice of Decision

The Secretary of State's appeal before the Upper tribunal is allowed. The decision of the First tier Tribunal shall be set aside to be remade by that Tribunal on a fresh hearing.

No anonymity direction is made.

Signed  Date 18 Feb 2019

Upper Tribunal Judge King TD