



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

Appeal Number: DA/00051/2018

THE IMMIGRATION ACTS

**Heard at Birmingham
On 9 August 2019**

**Decision & Reasons Promulgated
On 16 August 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**VALDAS [M]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O' Ryan

For the Respondent: Ms Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 18 December 1977 and is a male citizen of Lithuania. By a decision dated 6 December 2017, the Secretary of State decided to make a deportation order against the appellant. The appellant appealed to the First-tier Tribunal which, in a decision promulgated on 3 October 2018, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. I notified the representatives at the initial hearing at Birmingham on 9 August 2019 that I intended to allow the appeal. I shall, therefore, only give brief reasons. One of grounds of appeal concerns an alleged

procedural irregularity. The judge had reserved his decision following a hearing on 6 July 2018 and gave directions for both parties to make further written submissions. The Secretary of State had sent to the First-tier Tribunal the written further submissions of Mr Tallis, the presenting officer before the First-tier Tribunal. There is a copy of the written submissions on the Tribunal file. The judge's directions provided that the submissions should also be sent to the appellant solicitors who, in turn, would have permission to respond. I have a witness statement, endorsed with a statement of truth, from the solicitor of the appellant. She states that no copy of the Secretary of State's written submissions was ever received at her firm. The first she learnt of the existence of the submissions was when she read about them in the judge's decision dismissing her client's appeal.

3. In the light of the solicitor's statement which I accept as truthful in its entirety, I find that the appellant/his solicitors did not receive the submissions of Mr Tallis. Given that the judge had provided an opportunity to the appellant to respond to any such submissions, it follows that that opportunity was denied to the appellant who, as a consequence, has been denied a fair hearing of his appeal. I also take the point made by Mr O'Ryan, who appeared for the appellant before the Upper Tribunal, that the decision of the judge, in part, adopts arguments advanced by Mr Tallis in the written submissions. In the circumstances, I did not hear argument regarding the remaining grounds of appeal as it is clear that the decision of the First-tier Tribunal must be set aside and the appeal heard by a fresh Tribunal.
4. The judge found that the appellant had acquired a permanent right of residence. No challenge to that finding has been made by the Secretary of State. The First-tier Tribunal shall proceed to determine the appeal *de novo* on the basis that the appellant has a permanent right to reside in the United Kingdom.

Notice of Decision

The decision of the First-tier Tribunal which was promulgated on 6 October 2018 is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision at or following a hearing.

Both parties may submit fresh evidence provided copies of any documentary evidence are filed at the First-tier Tribunal and served upon the other party no less than 21 days prior to the next hearing. Both parties are directed to file and serve skeleton arguments no later than 10 days prior to the next hearing. The parties are referred to the preserved finding at [4] above.

Signed

Date 9 August 2019

Upper Tribunal Judge Lane