



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-005237

First tier Number: DA/00151/2020

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 31<sup>st</sup> of January 2024

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**Secretary of State for the Home Department**

Appellant

**and**

**Robert Zaludek**  
**(no anonymity order made)**

Respondent

**Representation:**

For the Appellant: Mr Bates, Senior Home Office Presenting Officer

For the Respondent: Mrs Christopher, Citadel Immigration Lawyers

**Heard at Manchester Civil Justice Centre on 26 January 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the Appellant likely to lead members of the public to identify him. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The Respondent is a national of Slovakia born in 1988. The Home Office want to deport him. On the 20<sup>th</sup> October 2023 the First-tier Tribunal (Judge Hena) allowed his appeal with reference to the Immigration (European Economic Area) Regulations 2016 and Article 8 ECHR. The Secretary of State now has permission to appeal against that decision.
2. The reason that the Respondent faces deportation is that on the 23<sup>rd</sup> September 2019 he was given a sentence of 15 months in prison upon conviction for violent disorder. Prior to that he had, over a period of several years accrued 7 convictions for 9 other offences, including shoplifting and driving offences.
3. Judge Hena allowed his appeal having made two central findings in respect of the case under the Immigration (European Economic Area) Regulations 2016.
4. First, the Tribunal was satisfied that the Respondent had shown that he had lived in the UK for a continuous period of at least five years: he was therefore entitled to permanent residence under regulation 15, and this in turn meant that he was entitled to enhanced protection in accordance with regulation 27(3):

(3) A relevant decision may not be taken in respect of a person with a right of permanent residence under regulation 15 except on serious grounds of public policy and public security.
5. Second, having made that finding, the Tribunal concluded that the Secretary of State had not discharged the burden of proof in showing that there were “serious grounds of public policy and public security” for his deportation.
6. In the alternative the appeal was allowed on Article 8 grounds.
7. The Secretary of State appeals on the following grounds:
  - (i) The Tribunal’s finding regarding Regulation 15 is flawed for a failure to make findings on whether the Respondent was a qualified person during that period;
  - (ii) It follows that the risk assessment was flawed because it was concerned with enhanced protection to which the Respondent was not entitled;
  - (iii) The Article 8 reasoning is flawed for a failure to have regard to the structure set out in Part 5A of the Nationality, Immigration and Asylum Act 2002.
8. At the hearing before me I heard submissions from Mr Bates and Mrs Christopher. The Respondent was not in attendance.

### **Error of Law**

9. I am satisfied that grounds (i) and (ii) are made out. The Tribunal was satisfied that the Respondent had been continuously present in the United Kingdom from around 2011/2012 to the time he went to prison in 2019, primarily on the basis of his criminal record and evidence that his children were born here during the

relevant period. There was however no consideration of whether he was, in the period in question, a qualified person. It is not clear to me that there was any evidence before the Tribunal which could potentially justify a conclusion that he was.

10. It follows that he should not have been found to benefit from enhanced protection under Regulation 27(3). The decision in respect of the Immigration (European Economic Area) Regulations 2016 will therefore need to be remade.
11. The decision under Article 8 is, I am satisfied, infected by this error, as it is clear that the Judge weighs into her s117C(6) proportionality balancing exercise the finding she had already made on the applicability of the Immigration (European Economic Area) Regulations 2016. It is true that there is a discrete finding that it would be unduly harsh for the children of this family if their father were to be removed, but this is unreasoned and further incomplete in that it does not address the Secretary of State's submission that the family can remain intact by relocating to Slovakia together.
12. The decision under Article 8 also falls to be remade.
13. I am told that the Respondent is currently engaged in other court proceedings which mean that he will not be free to attend the Tribunal until on or after the 11<sup>th</sup> March. I therefore direct that this matter should be remitted to the First-tier Tribunal (a Judge other than Judge Hena) on or after the 11<sup>th</sup> March 2024. I further direct that both parties have leave to submit any relevant evidence upon which they would wish to rely, providing that this is served in accordance with First-tier Tribunal directions.

### **Decisions**

14. The Secretary of State's appeal is allowed and the decision of the First-tier Tribunal is set aside.
15. The matter is remitted to be heard *de novo* by a judge of the First-tier Tribunal other than Judge Hena.
16. There is no order for anonymity.

Upper Tribunal Judge Bruce  
Immigration and Asylum Chamber  
26<sup>th</sup> January 2024