**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number: DA/00214/2016**

**THE IMMIGRATION ACTS**

| **Heard at the Royal Courts of Justice** | **Decision & Reasons Promulgated** |
|---|---|
| **On 2nd October 2017** | **On 11th October 2017** |

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MISS V L**
(ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer
For the Respondent: Ms P Chandran, instructed by Bail for Immigration Detainees on a pro bono basis

**DECISION AND REASONS**

1. The application for permission to appeal was made by the Secretary of State but nonetheless for the purposes of this decision I refer to the parties as they were before the First-tier Tribunal, that is V L as the appellant and the Secretary of State as the respondent.

2. The grounds on which the Secretary of State relied was that at paragraph 56 of the determination the First-tier Tribunal Judge states "I must make a decision in respect of this appellant's appeal. I find that a permanent right of residence is not required

to establish protection under Regulation 21(5) once lawful residence of ten years has been established". It was submitted that although the judge quotes paragraph 27 of **SSHD and Franco Vomero Italy UKSC 49**, at paragraph 55 of the First-tier Tribunal determination, the findings contained within that paragraph of **Vomero** were not taken into account. Paragraph 27 of **Vomero** states the following

> *"27. A majority of the court favours the view that possession of a right of residence is not needed in order to enjoy enhanced protection under Article 28(3)(a). But a minority regards the position as at least unclear and so as requiring a reference to the Court of Justice. The Supreme Court accordingly refers to the Court of Justice the question:*
>
> *(1) whether enhanced protection under Article 28(3)(a) depends upon the possession of a right of permanent residence within Article 16 and Article 28(2)".*

3. It was argued that the judge had materially erred in law by finding that the acquisition of enhanced protection resulting from ten years' residence did not require permanent residence. This matter was not settled by the Supreme Court, was referred to the ECJ for clarification. As such the judge erred in applying the highest level of protection against deportation.

4. At the hearing before me, further submissions were made by the appellant's solicitors, such that the appellant had recently received a positive reasonable grounds decision as the victim of modern slavery on 8th May 2017. This was followed by a positive conclusive grounds decision issued on 17th August 2017 and 13th September 2017. This noted however that the appellant was still the subject of deportation proceedings which were ongoing because she was convicted of an attempted robbery and sentenced to two years' imprisonment on 21st August 2015 . The matters relating to the conclusive grounds decision on slavery, nonetheless, post date the decision of the First-tier Tribunal Judge's decision.

**Conclusions**

5. The appellant is a national of Slovakia born on 14th March 1992. She arrived in the United Kingdom for a second time on 22nd January 2002 with her parents and siblings and were refused asylum. On 18th October 2006 the appellant's father completed an application for a residence permit as an EEA citizen. He stated that in his application he came to the UK with the appellant and her siblings and his wife on 1st April 2004. On 1st May 2004 Slovakia joined the EEA. On 7th December 2006 the appellant was issued with a registration certificate as a result of the father's application. The judge at paragraph 38 noted that the family had been living in the UK from 1st April 2004 and the appellant was included within an application of 2006 as a family member. The applications referred to periods of employment of the father from 21st July 2004 in the UK and the judge concluded that the appellant's father was indeed exercising treaty rights as from at least 21st July 2004.

6. At this point the appellant would have been a student and indeed the evidence given to the judge and accepted at paragraph 40 by the judge, was that the appellant when

living in the United Kingdom went to school and went to college where she studied hairdressing level 1 until she was 18 years old. Mr Tufan although arguing that there was little evidence of the appellant's father's working history and that the appellant herself had never done a day's work since she arrived, did not seek to argue before me that she had not been entitled to remain in the UK as a pupil and indeed the judge had accepted that she had been at school and college. In July 2004 the appellant was 12 years old and on the evidence as appeared accepted by the judge and the factual findings, it would appear that (although she could not have obtained permanent residence prior to 2006), the appellant had in fact acquired a permanent right of residence although no express finding was made on that point. The findings at paragraphs 47 and 48 the determination concluded that the appellant had in fact been lawfully resident from 1st May 2004 to June 2015 and that at paragraph 38 that she was a family member of EEA nationals exercising treaty rights. By May 2009 she would have acquired a right of permanent residence at an age of 17 as a family member under Regulation 7.

7. I therefore reason that as a consequence any error of law in relation to whether the right of permanent residence was required or not in order to benefit from the enhanced level of protection is immaterial. De factor the appellant would have, on the judge's findings, permanent residence.

8. Even if that is not correct, as pointed out by Ms Chandran the Secretary of State was present at the appeal hearing and did not request that this matter be stayed or adjourned and the judge took the point of **Vomero**, citing it at paragraph 55 of the First-tier Tribunal decision

> 55. *The Supreme Court considered this matter in SSHD v Vomero (Italy) [2016] UKSC 49, the Court stated at paragraph 27,*
>
> > *A majority of the Court favours the view that possession of a right of permanent residence is not needed in order to enjoy enhanced protection under article 28(3)(a). But a minority regards the position as at the least unclear and so as requiring a reference to the Court of Justice. The Supreme Court accordingly refers to the Court of Justice the question:*
> >
> > *"(1) whether enhanced protection under article 28(3)(a) depends upon the possession of a right of permanent residence within article 16 and article 28(2)."*
>
> *56. I must make a decision in respect of this Appellant's appeal. I find that a right of permanent residence is not required to establish protection under Regulation 21(5) once lawful residence of ten years has been established.*

In essence the judge found that a right of permanent residence was not required to establish protection under Regulation 21(5) once lawful residence of ten years had been established. I am not persuaded that it is legally wrong to be legally guided by a the majority of the Supreme Court.

9. What was not highlighted by the Secretary of State in her application was that a majority of the Supreme Court favoured the view that a possession of a right of

permanent residence was not needed in order to enjoy enhanced protection under Article 28(3)(a).

10. I can appreciate that Mr Tufan took issue with whether the appellant had reached the imperative grounds and the judge's reference to the moderate nature of her conviction which was in fact for attempted robbery, but I find no error in the judge's decision finding that imperative grounds were the relevant test as to the protection that the appellant would have derived from the EEA Regulations.

11. As I state the judge was requested to make a decision at the date of the hearing and his agreement with the majority of the Supreme Court does not in my view reveal in the circumstances an error of law.

12. The grounds were not formulated on the basis of a challenge to integration and Ms Chandran emphasised that the integrative links point could not be argued at this stage as there was no grant in respect of that matter. She pointed out that the appellant took up residence in 2004 in a lawful manner and was convicted in 2015. I am not persuaded that the judge erred in his assessment in any event at paragraph 53 where he stated "in the light of all of my findings, and the appellant's children living in the UK, I cannot conclude that the appellant's integrating links with the UK had been broken by her period of imprisonment.". The judge did indeed address the issue of integration and bearing in mind the appellant herself had been to school in the UK and indeed her children are living in the UK, I am not persuaded that an error was made as far as the approach to integration was concerned.

13. As such I find there is no error of law and the decision shall stand.

**Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

*Helen Rimington*

Upper Tribunal Judge Rimington Date 10th October 2017