



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00259/2017

THE IMMIGRATION ACTS

Heard at Bradford
On 25th January 2018

Decision & Reasons Promulgated
On 29th January 2018

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MAGOMEDS HIZRIJEVS
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Khubber (instructed by Turner & Miller Solicitors)
For the Respondent: Miss R Petterson (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant, with permission, in relation to a Decision and Reasons of Judge Grimmett following a hearing at Birmingham on 1st August 2017. In a Decision and Reasons promulgated on 29th August 2017 the appeal was dismissed on all grounds.
2. The Appellant is a citizen of Latvia. The Secretary of State made a decision to deport him under the EEA Regulations following a string of motoring offences which had latterly resulted in custodial sentences.

3. The ground relied upon by Mr Khubber was that the Judge had erred when assessing whether the Appellant had acquired permanent residence in the UK, which he argued that he had. Had she assessed that correctly then the test to be met before he could be deported was considerably higher.
4. The Appellant came to the UK in February 2010 aged 16. He was 21 on 28th October 2014. He would have achieved 5 years continuous residence by February 2015. As a direct descendant under the age of 21 he was a family member of his mother until he turned 21. It was accepted that this mother has always been exercising Treaty Rights.
5. The Judge found that she was not satisfied that he was dependant on his mother from October 2014 until February 2015 on the basis that there was no evidence who paid the household bills. That was a finding based on only part of the evidence and failed to take into account that the Appellant remained living with his mother during that time and was not working. Had she considered that she may have found he was a dependant relative and thus acquired permanent residence.
6. Miss Petterson agreed that there was an error of law and that it was material because a completely different test arises for a person with permanent residence. The Decision and Reasons must therefore be set aside in its entirety and redetermined.
7. That is not to say that the Appellant had acquired permanent residence. That is a matter that will have to be decided, on a correct consideration of all relevant evidence.
8. Given that no findings are preserved it is appropriate to remit the matter for a full rehearing in the First-tier Tribunal.

Notice of Decision

The appeal to the Upper Tribunal is allowed to the extent that the Decision and Reasons is set aside and the appeal remitted to the First-tier Tribunal for a full rehearing on all issues by a Judge, other than Judge Grimmett, at the Bradford hearing centre.

I make no anonymity direction.

Signed
Upper Tribunal Judge Martin

Date 25th January 2018