Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00638/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4 October 2018	**On 19 December 2018**

Before

THE HONOURABLE LADY RAE
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
DEPUTY UPPER TRIBUNAL JUDGE JORDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

EDGARAS [A]
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr C. Avery, Home Office Presenting Officer
For the Respondent: Mr A. Jones, Counsel, instructed by Thompson & Co., Solicitors

DECISION AND REASONS

1. The Secretary of State appeals against the decision of First-tier Tribunal Judge J. W. H. Law promulgated on 15 May 2018, in which he allowed the appeal of Edgaras [A], a Lithuanian citizen who was born on 19 April 1992, against the decision of the Secretary of State to make a deportation order against him within the context of the Immigration (European Economic Area) Regulations 2016. We shall refer to Mr [A] as 'the appellant', as he was before the First-tier Tribunal.

2. The nub of this appeal is to consider as a primary consideration whether the appellant had acquired a permanent right of residence. This is significant in the context of the 2016 Regulations as it determines the test to be applied when considering his removal. Once he has established the five-year residence test, namely that he has a permanent right of residence, that cannot render his removal lawful unless it is established that there are serious grounds of public policy to justify deportation.

3. The centrepiece of the Secretary of State's appeal is a long history of criminal offending. It is said in the grounds, and in paragraph 2 of the determination and repeated in the refusal letter, that there had been 7 convictions for 44 offences. It is of very considerable note that they spanned a period of about ten months from 31 August 2016 to 4 July 2017. It is important for us to consider not simply the number of convictions nor the number of offences but to consider each offence in detail. It is for this reason that we set out the criminal history in full. It is found between paragraphs 4 and 12 of the refusal letter made by the Secretary of State on 29 September 2017.

4. It is as well to put the 5-year timescale into context. It appears to have been accepted that time ran from the occasion when the appellant entered the United Kingdom for the last occasion on 21 August 2010. The judge therefore looked at a period which ended on 21 August 2015. Within that context one has to place the history of criminal offending between 31 August 2016 and 4 July 2017. There were indeed 7 convictions for 44 offences.

5. On 31 August 2016 he was convicted of interfering with a vehicle, using a vehicle while uninsured, using a vehicle with no test certificate, failing to surrender to custody, possessing a controlled class B drug (cannabis), driving a motor vehicle with a proportion of the drug above a specified limit and driving otherwise than in accordance with his licence. For these offences, a community service order was made on 31 August 2017 with a requirement that he attend at an attendance centre for a period of time. There were also additional impositions.

6. On 2 September 2016, a couple of days later, at the same court, he was convicted of theft and shoplifting and given one day's detention. On 9 September 2016, some nine days later, at the same Magistrates' Court he was convicted of theft and shoplifting and given a community order until 8 September 2017. However, on 19 October once again he appeared at the Suffolk Magistrates' Court and he was then convicted of failing to attend during the period of initial assessment following his test for class A drugs, shoplifting and the conviction for breach whilst subject to a community order.

7. As a result of that, it appears to us that all of the previous convictions were rolled up and he was sentenced to twelve weeks' imprisonment and ordered to pay compensation. That also entailed the revocation of the community order and a subsequently varied concurrent sentence of twelve weeks' imprisonment. Accordingly, in the period of 31 August 2016 until 19 October 2016 there was a lamentable lack of compliance on the part of the appellant with the laws of the

country or indeed the lawful requirements of the courts that imposed sentences upon him but that was resolved effectively on 19 October 2016 by a sentence of twelve weeks' imprisonment.

8. That, however, did not prevent the appellant from re-offending and so on 2 December 2016, which must have been very shortly after his release, he appeared once again in the Suffolk Magistrates' Court where he was once again convicted on eight counts of shoplifting and failing to comply with the various requirements lawfully imposed upon him. He was given a suspended sentence of imprisonment of two weeks, wholly suspended for eighteen months and an order for him to compensate his victims.

9. On 20 June 2017 at Suffolk Magistrates' Court he was convicted of five counts of shoplifting and remanded in custody until 4 July 2017. On that date, at the same court, he was sentenced to a total of eight months and fourteen days' imprisonment for a number of shoplifting offences and the commission of offences during the operational period of the suspended sentence. It appears to us that, bearing in mind he was subject to a suspended prison sentence of two weeks, the sentence of eight months and fourteen days probably reflects the imposition of the suspended sentence as part of the punishment on 4 July 2017.

10. We do not in any way consider that this history of offending should be marginalised, nor do we consider that it should be trivialised by calling it petty offending or not adequately reflected in the sentence of imprisonment but it could not properly be said that this presented serious grounds. The period of offending, as we have already pointed out, covers a period of nearly ten months. It so happened that it was a period during which the appellant was effectively out of work and was using his offending in order to provide income on which he might live. We do not even suggest that this is an excuse for his conduct but it does put it into the context of a short period of offending which has not been replicated since. This is largely because he has now been re-united with his father and he now lives in a much more stable environment.

11. The importance, as we have indicated, of this second level of protection is derived from a status of having a permanent right of residence and the judge had before him a considerable amount of evidence in relation to that. There was an additional bundle, served under cover of a letter of 2 May 2018, where the appellant's father provided a statement that he had come to the United Kingdom in 2006 and that he had been working continuously since arriving in the United Kingdom. In order to support that, he enclosed a copy of his national insurance record. The father did not give evidence but it does not appear to be suggested that the record that he provided was inaccurate or was inauthentic.

12. The letters from the HM Revenue & Customs dealing with his national insurance are found at pages 8 through to 12 of the bundle that was before the First-tier Tribunal Judge. It is not necessary to recite the whole of the document but one can provide a snapshot by looking at the position in 2006 to 2007 where he paid contributions of

£696.16 towards national insurance. However, that was immediately followed by a sharp rise in the year 2007 to 2008 where the contributions increased to £1,404.66 and then went upwards so that by 2009 to 2010 his contributions had increased to over £3,000 and remained near £3,000 for the following year. In 2011-2012 and in 2012-2013 he was paying national insurance contributions of £2,130 and £2,254 respectively and the contribution evidence then continued thereafter.

13. That, in our judgment, was material which was before the judge and on which he was entitled to reach the conclusion that the appellant's father was in gainful employment as a Lithuanian citizen exercising Treaty rights. The significance of this is that the appellant himself is able to rely upon the dependency which existed between him and his father until the appellant reached the age of 21, which occurred on 19 April 2013. The starting-point for the calculation, as we have already said, is stated by the judge to have been 2010. That appears in paragraph 10 of the determination. The judge recorded that the appellant said that the first time he had come to the UK was in 2007 to 2008, that he had then gone to Holland for a period of eight or nine months but he had returned to the UK in 2010. It is that starting-period of 2010 (which was subsequently said to be, we believe, 21 August 2010), which set out the first period in which he sought to accumulate the time necessary to establish a permanent right of residence. Consequently, from 21 August 2010 until he attained the age of 21 on 19 April 2013, the appellant was able to rely upon a dependency upon his father in order to make good his claim for a permanent right of residence.

14. Thereafter the judge refers in paragraph 26 of the determination to a number of payslips from various employers and certificates for training courses and the supplementary bundle, which contained the appellant's own registration with HMRC national insurance records on 23 June 2011. From that it can be gleaned that the appellant himself was working from 3 July 2011 until 1 February 2013. There then follows a second period of employment which ended on 15 November 2013. Consequently, the appellant can rely both on his own working during the relevant period and upon his dependency, which ended on 19 April 2013.

15. The evidence, however, did not end there and the judge incorporates into his determination paragraph 5 of the skeleton argument, which contains a summary. We are not required to set out the terms of paragraph 5, which we may read into this determination. Suffice it to say that the skeleton argument sets out in subparagraphs (a) to (h) various employments covering the period 3 July 2011 to 5 May 2016. Each of those periods of employment was apparently supported by references to documents in the bundles. None of the entries (a) to (h) are unsupported by documentary evidence. It shows that the appellant was working for a number of employers during the period. Some of the jobs overlapped and, in those circumstances, we infer that he was working in two jobs at the same time. It follows that in paragraph 27 of the determination the judge was able to conclude:

> "Having considered the evidence and submissions and having no reason to doubt the credibility of the evidence I am on balance satisfied that the appellant has been in the UK since 21 August 2010 other than the three month holiday in Poland in 2014, which was not long enough to break continuity. I am also

> satisfied on balance that he was exercising Treaty rights by engaging in real and effective work from before his 21st birthday until 21 August 2015, at which point he acquired a permanent right of residence."

16. In our judgment, based on the evidence which we have summarised, that was a finding that was properly open to the judge and his decision cannot be faulted. He then went on to deal with the question of whether the offending under consideration amounted to serious grounds of public policy justifying his deportation and, properly, in our view, came to the conclusion that the level of offending did not amount to serious grounds sufficient to justify his deportation. In these circumstances, we are satisfied that the judge made no error of law.

17. It was submitted on behalf of the Secretary of State that the judge's reasoning was defective, it was inadequate and it did not properly particularise the basis upon which the acquisition of a permanent right of residence had been established. We emphatically reject that submission. We consider that the combined effect of the father's evidence, the father's record of paying national insurance, the appellant's record of employment and the documentation set out in paragraph 5 of the skeleton argument were quite enough, were indeed ample, to satisfy the finding that was made by the judge that he had been exercising Treaty rights or was entitled to rely prior to his 21st birthday upon the fact that he was a dependant of his working father.

18. We therefore dismiss the appeal of the Secretary of State against the determination of the First-tier Tribunal Judge and we direct that the determination of the First-tier Tribunal shall stand.

NOTICE OF DECISION

(i) The appeal of the Secretary of State is dismissed.
(ii) The decision of the First-tier Tribunal allowing the appeal of Mr [A] contains no error of law and the judge's determination shall stand.

ANDREW JORDAN
DEPUTY JUDGE OF THE UPPER TRIBUNAL