



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00213/2017

THE IMMIGRATION ACTS

Determined On the Papers at Field House
On 13 March 2019

Decision & Reasons Promulgated
On 26 March 2019

Before

**THE HONOURABLE MRS JUSTICE FARBEY
UPPER TRIBUNAL JUDGE KING TD**

Between

MR JAN GAJDOS

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant, who was born on 26th March 1974, is a citizen of Slovakia. He seeks to appeal against the decision of the respondent dated 27th March 2017 to issue a deportation order pursuant to Section 5(1) of the Immigration Act 1971 and Regulations 19(b) and 21 of the Immigration (European Economic Area) Regulations 2016.
2. The appeal came before First-tier Tribunal Judge Chana on 21st June 2018. The appeal was dismissed. On that occasion the appellant did not attend the hearing and that was taken against him by the Judge. He had been removed to Slovakia on 3rd May 2017 but had made no application to return to the UK for his hearing or to instruct solicitors.

3. Representing himself in the appeal against that decision, the appellant raised a number of matters of concern which were found by Judge Page to be arguable. Thus, it was that on 7th November 2018 permission to appeal to the Upper Tribunal was granted.
4. The matter came before ourselves to determine whether or not there was an error of law in the First-tier Tribunal decision. The hearing on that matter was on 22nd January 2019.
5. At the hearing we were represented with a letter from the appellant explaining that he would like to excuse himself from attending the hearing because of health problems and requesting us to determine the appeal on the arguments written in a previous letter to the Tribunal.
6. We were concerned as a matter of fairness in the proceedings to understand clearly what was meant by the letter. It was not clear to us whether the appellant would have wished to have been present at the appeal or whether he was content for the matter to be dealt with in his absence.
7. Following the adjournment we set out our reasons for doing so and we also set out our concerns as we saw it as to the nature of the decision by First-tier Tribunal Judge Chana which was the subject of the appeal.
8. A number of directions were issued in our decision.
9. The appellant in an e-mail of 6th March 2019 indicated that he would like to attend the hearing regarding to his appeal, explaining that he has changed his address in Slovakia. He did not however engage with the other matters set out in the directions.
10. It is to be noted that the respondent was also invited to consider a number of matters and whether or not he would resist the setting aside of the decision to be remade before the First-tier Tribunal. The directions indicated that after 28 days the matter would be placed before Judge King for further directions as to its listing or alternatively for remittal to the First-tier Tribunal.
11. The fundamental issue of concern in the First-tier Tribunal decision was the finding by the Judge that the appellant enjoyed the highest level of protection. This was in the face of the contention, made on behalf of the respondent, that he had not acquired any permanent right of residence under the EEA Regulations. We found it difficult to understand how the Judge had come to that conclusion. It was not a matter that had been analysed with particular accuracy in the decision.
12. The appellant had been involved with a serious offence of production of a class B drug cannabis, for which offence he was convicted on 14th July 2016 and sentenced to one year and six months' imprisonment. If indeed he was entitled only to be removed from the jurisdiction on imperative grounds of public policy, it is arguable that that offence would not reach that threshold.

13. We note also that the Judge seemingly held the absence of the appellant from the hearing against him. We noted that the Rule 24 response, filed on behalf of the respondent, would seem to support the unsatisfactory nature of the decision, rather than to preserve it.
14. It seems to us to be unnecessary to hold a further hearing in the Upper Tribunal because we are quite clear that this is a decision that cannot fairly stand and accordingly is to be set aside to be remade.
15. Having regard to the Senior President's Practice Direction we find that the appropriate venue for a rehearing is the First-tier Tribunal. The matter will be remitted for a full rehearing of the relevant issues.
16. It will be for that Tribunal to issue the necessary directions and provide to the appellant the appropriate advice in order for him to make a proper application to re-enter the United Kingdom under Regulation 38 to present his case before the Tribunal.

No anonymity direction is made.



Signed

Date 22 March 2019

Upper Tribunal Judge King TD