



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00085/2020**

THE IMMIGRATION ACTS

**Heard at Field House
On 26 November 2021**

**Decision sent to parties on
On 13 December 2021**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**PETERIS SONDEERS
(NO ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Mr S Walker, a Senior Home Office Presenting Officer
For the Respondent: No appearance or representation

DECISION AND REASONS

The Secretary of State appeals with permission against the decision of the First-tier Tribunal on 27 January 2021, allowing the claimant's appeal against a deportation order made on 25 February 2020 and which, although the judge was not aware of this, had in fact been executed on 17 September 2020. The claimant is and has been since that date in Latvia, his country of origin, and not in the United Kingdom.

It is plain from the First-tier Judge's decision that Ms Arnold, who represented the Secretary of State at that hearing, did not disclose the fact that the claimant had been removed. In principle, that raises serious difficulties with

service of the notice of hearing but I note from the decision at [22]-[24] that the notice of hearing was served to an email address specified by the claimant and there is no indication that it was not received.

It seems that since his removal from the United Kingdom, the claimant has taken very little interest in his appeal against the deportation order. He did not appear at the First-tier Tribunal nor did he arrange representation. The same is the position today. I am satisfied that he was served by email to his nominated personal email address both in relation to the First-tier Tribunal hearing and today's hearing.

The Secretary of State's challenge is to the rationality of the First-tier Judge's acceptance at [37]-[38] of a document, advanced by the Secretary of State as the claimant's interview at HMP Wandsworth, in which he asserted that he had been in the United Kingdom since 2011 and therefore that he was continuously resident for a period of five years in accordance with the Regulations and had become a qualified person.

The First-tier Judge did not direct himself that in order to become a qualified person, the claimant needed to show residence in question *in accordance with the Regulations*. The burden of so proving is on the claimant and he has taken no steps to discharge it. There was no evidence before the First-tier Tribunal from which it could properly be found that the claimant's residence, even if it began in 2011, was in accordance with the Regulations.

Accordingly, the decision of the First-tier Tribunal falls to be set aside on rationality and *Wednesbury* unreasonableness grounds. I proceed therefore to remake the decision.

I am not satisfied that the claimant has acquired the protection of the Regulations and even if he did, I am satisfied, having regard to the frequency of his offences during the offending period which are set out at paragraphs 4 to 9 of the First-tier Tribunal's decision, that he had become a persistent offender.

I have had regard to the clarification of the meaning of 'the fundamental interests of society' at Schedule 1 paragraph 7 of the 2016 Regulations, which says that:

- "7. For the purposes of these Regulations the fundamental interests of society in the United Kingdom include ...
- (h) combating the effects of persistent offending (particularly in relation to offences which if taken in isolation may otherwise be unlikely to meet the requirements of Regulation 27)."

That is precisely the situation here and accordingly, it was open and lawful for the Secretary of State to make the deportation order that she did and indeed to execute it, as she has done.

DECISION

1. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by dismissing the appeal.

Signed [Judith AJC Gleeson](#)
Upper Tribunal Judge Gleeson

Date: 6 December 2021