



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: EA/01877/2019

**THE IMMIGRATION ACTS**

**Heard at Manchester Civil Justice Centre  
via Skype for Business  
On 28 September 2020**

**Decision & Reasons  
Promulgated  
On 1 October 2020**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**SERGESS FROLOVS  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Jegarajah, instructed by ARKAS Law

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, a 'non-citizen of Latvia', was born on 22 May 1974 of Russian parentage. He had been issued with an Alien's passport by the Latvian authorities in August 1998. He appealed to the First-tier Tribunal (Judge Head) against the decision of the Secretary of State dated 3 April 2019 to refuse to issue him with a residence card as an extended family member of an EEA national. The First-tier Tribunal, in a decision promulgated on 18 November 2019, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. At the initial hearing, Mr McVeety, who appeared for the Secretary of State, told me that the respondent agreed that the First-tier Tribunal had fallen into material legal error and that the decision should be set aside. I shall, therefore, be brief. Both parties are agreed that the First-tier Tribunal judge, whilst applying the rule in *Secretary of State for the Home Department v D (Tamil)* [2002] UKIAT 00702 \*, has overlooked the fact that a previous decision of the First-tier Tribunal (Judge Black) promulgated on 13 August 2018 had been considered on human rights grounds (Article 8 ECHR) following the refusal of human rights application by the Secretary of State who had issued a deportation order against the appellant under the UK Borders Act 2007. The appeal before the First-tier Tribunal, which is a subject the current proceedings, arose from a refusal to issue a residence card to the appellant and engaged Regulation 18 of the Immigration (European Economic Area) Regulations 2016. Whilst the factual findings of Judge Black may be relevant in the current proceedings, it is difficult to see how a simple reliance upon *D (Tamil)* [2002] UKIAT 00702 \* such as that in the judge's decision at [27] was sufficient to discharge a decision maker's requirement under Regulation 18(5) to carry out 'an extensive examination of the personal circumstances of the ... and if the application is refused, [to] give reasons justifying the refusal unless this is contrary to the interests of national security.' The judge was clearly not helped by the fact that documents were missing from the file, including another decision of 2019; Ms Jegarajah, who appeared for the appellant before the First-tier Tribunal and Upper Tribunal, told me that she had seen this document and had prepared the grounds of appeal by reference to it but had returned it to the appellant. I confirmed that there was no copy of it on the Tribunal file. Mr McVeety has helpfully agreed to email copies to both the Upper Tribunal and the appellant's representatives.
3. Mr McVeety told me that the confusion of the judge as regards the nature of the previous appeal and the absence of any substantive reasoning beyond that of following the findings of a previous Tribunal, which had considered an appeal on a different legal basis effectively vitiated the First-tier Tribunal's decision. I agree. I set aside the decision of the First-tier Tribunal. I return the appeal to the First-tier Tribunal for that Tribunal to remake the decision at or following a hearing. The findings of Judge Black shall stand (indeed, there have not been challenged) but such findings as have been made Judge Head are set aside.

### **Notice of Decision**

The decision of the First-tier Tribunal promulgated on 18 November 2019 is set aside. The appeal is returned to the First-tier Tribunal (**not Judge Head; 1.5 hours; no interpreter; first available date at Hatton Cross**) for that Tribunal to remake the decision at or following a hearing.

Signed

Date 28 September 2020

Upper Tribunal Judge Lane