24 July 2019

PRESS SUMMARY

Secretary of State for the Home Department (Appellant) v Franco Vomero (Italy) (Respondent)
[2019] UKSC 35
On appeal from [2012] EWCA Civ 1199

JUSTICES: Lady Hale (President), Lord Reed (Deputy President), Lord Wilson, Lord Mance, Lord Hughes

BACKGROUND TO THE APPEAL

The Respondent, Mr Franco Vomero, is an Italian national who has lived in the United Kingdom since 1985. In 1998 his marriage to his British wife broke down, and he moved into accommodation with Mr Edward Mitchell. In 2001, he killed Mr Mitchell. In 2002 he was sentenced to eight years' imprisonment for manslaughter. In 2006 he completed the custodial part of his sentence. On 23 March 2007 the Home Secretary decided to deport him under regulations 19(3)(b) and 21 of the Immigration (European Economic Area) Regulations 2006. Regulation 21 gives effect to articles 27 and 28 of Directive 2004/38/EC ("**Directive**").

In October 2007 the Immigration and Asylum Tribunal ("**IAT**") dismissed Mr Vomero's appeal against the deportation decision. A Senior Immigration Judge ordered that the IAT's determination be reconsidered. On reconsideration, the IAT allowed Mr Vomero's appeal. The Court of Appeal dismissed the Secretary of State's appeal against the second IAT determination. The Secretary of State appealed to the Supreme Court.

Following an initial hearing of his appeal in 2016, the Supreme Court referred a number of questions to the Court of Justice of the European Union ("**CJEU**"). The Supreme Court's reasons for making the reference were explained in a judgment given by Lord Mance. After the CJEU delivered its judgment on 17 April 2018, the Supreme Court held a further hearing on 7 February 2019.

JUDGMENT

The Supreme Court unanimously allows the appeal. Lord Reed, with whom the rest of the Court agrees, delivers the judgment.

REASONS FOR THE JUDGMENT

In the reference, the Supreme Court asked whether a right of permanent residence ("**RPR**") is a prerequisite for enhanced protection against expulsion pursuant to article 28(3)(a) of the Directive, as the Court of Appeal had held. Pursuant to that article, an expulsion decision "*may not be taken against Union citizens, except if the decision is based on imperative grounds of public security, as defined by member states, if they have resided in the host member state for the previous ten years*". The CJEU held that RPR is a prerequisite for this, because article 28 provides a graduated scheme of protection, under which the degree of protection reflects the individual's degree of integration into the host member state. **[26]**

In the initial judgment of the Supreme Court, Lord Mance concluded that Mr Vomero had not acquired a right of permanent residence in the UK by the date of the decision to deport him, notwithstanding his many years of residence, because his imprisonment between 2001 and 2006 had the result that he had not resided legally in the UK for a continuous period of five years as at 30 April 2006, which is when the Directive was due to be implemented, or any later date before the decision to deport him. **[30]**

It is now argued on Mr Vomero's behalf that it was wrong for the Supreme Court to conclude that he did not have RPR, because the CJEU observed in the course of its judgment that the question referred to it was based on the premise that he does not have RPR, and that it did not have all the information necessary in order to assess whether the premise was correct. In response, the Secretary of States maintains that Lord Mance's conclusion was correct but concedes that it will be open to Mr Vomero to argue that he has acquired a right of permanent residence since the date of the decision to deport him. **[31]-[32]**

The proposition which the CJEU said that it was unable to assess, namely that Mr Vomero does not have RPR, is not the same as Lord Mance's conclusion, namely that Mr Vomero had not acquired RPR by 23 March 2007. **[33]** The same is true of the Advocate General's preliminary observations. **[34]**

The leading authority on the significance of imprisonment in relation to the acquisition of RPR is *Onuekwere v Home Secretary* (Case C-378/12) [2014] 1 WLR 242, where the CJEU held that periods of imprisonment could not be taken into account for the purpose of calculating the length of the claimant's residence in the UK, and interrupted the continuity of such residence. **[42]**

The present case differs from *Onuekwere* in that Mr Vomero had completed more than five years of continuous legal residence in the UK before he was imprisoned in 2001. However, the period of imprisonment for more than two years which he had undergone by 30 April 2006 prevented him from acquiring a right of permanent residence on that date, in the same way as absence from the UK or being out of work for more than two years would have done, following *Secretary of State for Work and Pensions v Lassal* (Case C-162/09) [2001] 1 CMLR 31 and *Secretary of State for Work and Pensions v Dias* (Case C-325/09) [2011] 3 CMLR 40. Accordingly, the necessary period of five years' continuous legal residence could not begin any earlier than when he completed the custodial part of his sentence, and five years' continuous legal residence had not been completed by the time the decision to deport him was made. **[45]**

It will be necessary for the tribunal, when this case is remitted to it, to consider not only whether Mr Vomero has acquired a right of permanent residence since the date of the decision to deport him, but also whether there still exist "*grounds of public policy or public security*" within the meaning of article 28(1) of the Directive on the basis of which his expulsion could be justified. **[47]**

References in square brackets are to paragraphs in the judgment.

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:
http://supremecourt.uk/decided-cases/index.html