Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00304/2017

THE IMMIGRATION ACTS

Heard at the Royal Courts of Justice	**Decision & Reasons Promulgated**
On 12th March 2018	**On 15th March 2018**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

F A
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: In person
For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State, I shall refer to the parties as in the First-tier Tribunal. The Appellant is a citizen of the Netherlands born on 25 August 1998. His appeal against deportation was allowed by First-tier Tribunal Judge Ian Howard on 27 June 2017 under the Immigration (EEA) Regulations 2016.

2. Permission to appeal was granted by Upper Tribunal Judge Kekic on the grounds that the judge arguably misdirected himself in law in finding that the Appellant was entitled to an enhanced level of protection when the

evidence failed to show that the Appellant had acquired permanent residence.

3. Mr Jarvis submitted that the judge erred in law in concluding, at paragraph 13, that by virtue of Regulation 27(4) the decision to deport could only be made on imperative grounds of public policy. The judge failed to look at the quality and substance of the Appellant's residence and consider whether it was qualifying residence under the Regulations.

4. I indicated that I agreed with that submission and the Appellant stated that he had evidence to show that he and/or his mother were exercising Treaty rights and that he was integrated in the UK.

5. I find that there is an error of law in the decision of 27 June 2017 because the judge has only considered the length of residence and failed to consider whether it was 'qualifying' residence under the Regulations. The judge found that the Appellant had been living in the UK since at least September 2006 and stated at paragraph 12 "That is a period of more than 10 years to the date of the Respondent's decision." The judge failed to make any findings on whether the Appellant or his mother were exercising Treaty rights.

6. I set the judge's decision aside. None of his findings are preserved. I adjourn the hearing with the following directions:

   (i) The Appellant to file and serve any further evidence upon which he intends to rely no later than 14 days before the hearing.

   (ii) The Appellant to file and serve a skeleton argument no later than 14 days before the hearing.

   (iii) The Respondent to file and serve a skeleton argument no later than 7 days before the hearing, including an up to date PNC printout.

   (iv) The skeleton arguments should deal with the following issues:

      a. Whether the Appellant has acquired permanent residence, including the exercise of Treaty rights; and

      b. Whether the Appellant is entitled to enhanced protection, including the Appellant's integration in the UK.

Notice of Decision

Appeal allowed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

J Frances

Signed Date: 12 March 2018

Upper Tribunal Judge Frances