



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00574/2017

THE IMMIGRATION ACTS

Heard at Field House
On 21 August 2018

Decision & Reasons Promulgated
On 5 September 2018

Before:

UPPER TRIBUNAL JUDGE GILL

Between

The Secretary of State for the Home Department

Appellant

And

Ruben Tiago Da Costa Margues
(ANONYMITY ORDER NOT MADE)

Respondent

Representation:

For the Appellant: Ms A. Brocklesbury-Weller, Senior Presenting Officer.

For the Respondent: No appearance.

DECISION AND REASONS

Introduction and background facts:

1. The Secretary of State has been granted permission to appeal to the Upper Tribunal against a decision of Judge of the First-tier Tribunal Burnett (hereafter the "judge") who, in a decision promulgated on 7 February 2018 following a hearing on 8 December 2017, allowed the appeal of Mr Ruben Tiago Da Costa Margues (hereafter the "claimant"), a national of Portugal born on 11 November 1984, against a deportation order made by the Secretary of State dated 21 September 2017 in accordance with regulations 15, 23(6)(b) and 27 of the Immigration (European Economic Area) Regulations 2016 (hereafter the "Regulations"). The Secretary of State's reasons for making the deportation order are set out in a letter dated 21 September 2017 (the "decision letter").

Criminal convictions

2. The claimant claimed to have arrived in the United Kingdom on 7 September 2003. According to the Police National Computer record, this criminal history is as follows:
- i) He was convicted on 10 occasions between 16 February 2010 and 28 December 2016 of 16 offences.
 - ii) In summary, he has one conviction for handling stolen goods, five convictions for possession of Class A drug (heroin, cocaine and crack cocaine) on three occasions, four convictions for theft by shoplifting on two occasions, one conviction for theft, various breaches of community orders and one conviction for failing to surrender to custody.
 - iii) His sentences included being fined (the largest being a fine of £250) and being sentenced to community orders on more than three occasions. On one occasion (9 June 2017), the community order was imposed with a drug rehabilitation requirement ("DDR"). The claimant breached every community order, including the DDR, except the community order imposed on 28 December 2016.
 - iv) The community orders that the claimant breached were subsequently varied or revoked. On one occasion, this led to a sentence of a term of 2 months' imprisonment, wholly suspended for a period of 12 months.

Paras 5-15 of the decision letter, quoted at para 9 below, set out the criminal convictions and sentences in chronological order.

3. In the decision letter, the Secretary of State did not accept that the claimant had acquired a permanent right of residence and considered the claimant's case on the basis that he had the lowest level of protection. The Secretary of State considered that the claimant presented a high risk of re-offending, that deportation would not prejudice his rehabilitation prospects and that deportation was proportionate.

The judge's decision

4. The judge reached the following conclusions:
- (i) The claimant was entitled to the highest level of protection under regulation 27 (para 34) and that his offending behaviour did not come anywhere near to imperative grounds of public security (para 36).
 - (ii) In the alternative, the claimant had acquired a permanent right of residence and that, although his offending behaviour continued and he represented a high risk of re-offending, his behaviour had not yet reached the threshold of serious grounds of public policy or security as the claimant had not yet been sentenced to a term of immediate imprisonment (para 37).
 - (iii) In the further alternative, even if the claimant was only entitled to the lowest level of protection, he did not represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. The judge concluded that the decision was disproportionate. The judge gave his reasons at paras 40-55. It is clear from his reasoning that he placed little weight on the factor of rehabilitation (para 51), that he had little information before him about the claimant's partner in the United Kingdom or whether any family he had in the

United Kingdom have remained in the United Kingdom. It is clear that his decision that the Secretary of State's decision was disproportionate was largely based on the fact that the claimant had lived in the United Kingdom for 14 years from the age of 19 years until the age of 33 years (para 53).

(iv) The judge said (para 56) that, as the considerations under the Regulations were wider than an Article 8 consideration, he also allowed the human rights appeal.

5. The claimant did not attend the hearing before the judge nor was he represented. The judge was informed that the claimant had refused to board the van that would have brought him to the hearing centre. The judge was also informed by the Secretary of State's representative that the claimant had signed a disclaimer stating that he wished to leave the United Kingdom (para 4).

6. The judge heard submissions from the Secretary of State's representative (para 13).

The issues and the grounds

7. The issues in this appeal are:

- (i) whether the judge made a material error of law in finding that the claimant had acquired permanent residence and was entitled to protection on both serious and imperative grounds;
- (ii) whether the judge made a material error of law in his assessment of the proportionality of the decision to deport under the Regulations; and
- (iii) whether any error in relation to the assessment of proportionality under the regulations meant that he also materially erred in law in allowing the Article 8 claim.

8. The grounds may be summarised as follows:

- (i) There was insufficient evidence for the judge's finding that the claimant had acquired permanent residence so as to be entitled to protection on serious grounds. In addition, there was insufficient evidence for the judge's finding that the claimant had entitled to protection on enhanced grounds. The decision letter stated that the documentary evidence produced was insufficient and the claimant did not attend the hearing.
- (ii) In relation to proportionality, the judge said at para 52 that he had considered the impact of the claimant's deportation on his relationship with his partner which, the grounds contend, contradicts para 45 where the judge said that he had little information regarding the claimant's partner and that he (the judge) did not know if the partner remained in the United Kingdom or the extent of the relationship and contact with the claimant.
- (iii) In view of the lack of evidence, the judge had failed to give adequate reasons for his findings that the claimant was entitled to protection on serious grounds or imperative grounds.
- (iv) Given the lack of evidence, the findings on proportionality also infected the decision on the claimant's human rights claim.

The chronology of the claimant's criminal convictions

9. The chronology of the claimant's criminal convictions is set out at paras 5-15 of the decision letter, which read:

- “5. Between 16 February 2010 and 28 December 2016 you have been convicted on 10 occasions for 16 offences. Listed below-
6. On 16 February 2010 at Fenland Magistrates Court, you were convicted of handling stolen goods. You were fined £100, paid £15 victim surcharge, £85 costs and £50 compensation.
7. On 17 March 2010 at Fenland Magistrates Court, you were convicted of:
 - Possession of a controlled drug- Class A – Heroin. Your sentence was postponed. On 21 April 2010 you were sentenced to a community order until 20 April 2011, 100 hours unpaid work requirement. This was subsequently varied on 29 September 2010 and you were sentenced to 2 months imprisonment wholly suspended for 12 months, 12 months supervision order and 109 unpaid work requirement.
 - Theft. No separate penalty was received and you was *[sic]* ordered to pay £100.
8. On 15 June 2010 at Fenland Magistrates Court you were convicted of failing to comply with the requirements of a community order and sentenced to an additional 21 hours unpaid work requirement resulting from your original conviction of 15 June 2010.
9. On 10 August 2010 at Fenland Magistrates Court you were convicted of failing to comply with the requirements of a community order and sentenced to an additional 20 hours unpaid work requirement resulting from his *[sic]* original conviction on 21 April 2010.
10. On 29 September 2010 at Fenland Magistrates Court you were convicted of failing to comply with the requirements o a community order. Your order was revoked and sentenced subsequently varied on 29 September 2010 and you were sentenced to 2 months imprisonment wholly suspended for 12 months, 12 month supervision order and 109 hour unpaid work requirement.
11. On 20 October 2014 at South London Magistrates you were convicted of possessing controlled drugs – Class A – Heroin and Cocaine and fined £250 and ordered to pay £25 victim surcharge.
12. On 4 May 2016 at South London Magistrates Court you were convicted of 3 counts of theft - shoplifting and remanded on condition *[sic]* bail until 25 May 2016. On 9 June 2016 you were sentenced to a community order until 9 June 2017, ordered to pay £50 costs, £60 victim surcharge fee and drug rehabilitation requirement. Your sentence was subsequently varied on 15 December 2016.
13. On 19 May 2016 at Central London Magistrates Court you were convicted of theft – shoplifting. You were given unconditional bail – remittal for sentencing. On 9 June 2016 *[sic]* was sentenced to a community order until 9 June 2017, ordered to pay £50 costs. £60 victim surcharge fee and a drug rehabilitation requirement. Your sentence was subsequently varied on 15 December 2016.
14. On 15 December 2016 at South London Magistrates Court you were convicted of failing to comply with the requirements of a community order resulting from the original conviction of 9 June 2016 – this order was revoked.
15. On 28 December 2016 at South London Magistrates Court you were convicted on *[sic]* two counts of possession of Class A drugs – Crack Cocaine and sentenced to a community order until 28 December 2017, paid £85 costs, £85 victim surcharge and an unpaid work requirement.”

The hearing in the Upper Tribunal

10. There was no appearance by or on behalf of the claimant. Ms Brocklesbury-Weller reminded me that the judge had evidence before him that the claimant had signed a disclaimer stating that he wished to leave the United Kingdom. She informed me that the claimant was removed on 22 December 2017.
11. I considered whether to proceed in the absence of the claimant. The Notice of the hearing dated 16 July 2018 was served on the claimant at the detention centre at which he was last held. Since this was the last correspondence address held for the claimant, I was satisfied that notice of the hearing had been fully served.
12. The claimant had not contacted the Upper Tribunal to update the Tribunal on his position, whether as to his address or representation on his behalf. There was no reason to think that, if the hearing was to be adjourned, there would any attendance by or on behalf of the claimant at the next hearing. Having considered the overriding objective, I exercised my discretion and proceeded with the hearing in the claimant's absence.
13. This is an appeal under the Regulations. Regulation 34(5) provides that a pending appeal is not to be treated as abandoned solely because the claimant leaves the United Kingdom. Accordingly, I am satisfied that this appeal is still pending before the Upper Tribunal.
14. I heard submissions in brief from Ms Brocklesbury-Weller and then reserved my decision.

Assessment

15. In Land Baden-Württemberg and SSHD v. Franco Vomero (Joined cases C-424/16 and C-424/16), 17 April 2018, the Grand Chamber held that it is a prerequisite of eligibility for enhanced protection against expulsion that the person concerned must have a right of permanent residence.
16. I shall therefore consider whether the judge materially erred in law in reaching his finding that the claimant had acquired a right of permanent residence.
17. The judge had before him a document from the HMRC website (hereafter the "HMRC Document") entitled: "*Your National Insurance Record*" which had been downloaded by the claimant and which set out his national insurance contributions for various years from the tax year 2003-2004. This document is in the respondent's bundle. I have assembled the information from this document into the following table (the page numbers relate to the respondent's bundle):

<u>Year</u>	<u>Information on the HMRC document</u>	<u>Page number</u>
2003-2004	Full year's contributions made	B10
2004-2005	Full year's contributions made	B10
2005-2006	Full year's contributions made **	B10
2006-2007	Full year's contributions made	B10
2007-2008	Full year's contributions made	B10
2008-2009	[not mentioned in document]	-
2009-2010	[not mentioned in document]	-
2010-2011	Full year's contributions made	B9

2011-2012	No contributions were made	B9
2012-2013	No contributions were made	B9
2013-2014	Contribution of £145.20 was made. There was a shortfall of £257.45	B9
2014-2015	Full year's contributions made	B8
2015-2016	Full year's contributions made	B8
2016-2017	The record for the year was not yet available	B9

** However, the HMRC document also states that there was a national insurance credit for 2 weeks for this year. The amount of the contributions from paid employment for 2005-2006 was stated to be £555.47.

18. The information in the HMRC table for the year 2005-2006 is puzzling because it states, on the one hand, that contributions for 2005-2006 were made for the full year and also that there is a national insurance credit for 2 weeks.
19. The judge's reasons for concluding that the claimant had acquired a right of permanent residence are set out at paras 29-32. In essence, he found that the document from the HMRC website submitted by the claimant showed that he had made national insurance contributions such that it satisfied him that the claimant had been exercising Treaty rights for more than five years and, further, that the documents also showed that the claimant had been continuously resident for more than 10 years.
20. Paras 29-32 of the judge's decision read:
 29. The respondent considered the documentation from HMRC but concluded that it was not sufficient to show [the claimant] had acquired a permanent right of residence.
 30. However, there is no suggestion that the document from the HMRC website is not authentic and does not relate to [the claimant]. It shows he has 'full contributions' for a number of years. The respondent did not check with HMRC to discover [the claimant's] employment history despite the detailed information that [the claimant] provided.
 31. In the record it states that [the claimant] had full contributions from paid employment for the years 2003-2004, 2004-2005, 2006-2007, 2007-2008, 2010-2011. In the year 2005- 2006 it states that there was a credit for National insurance for 2 weeks. From 2011 until 2013 the years are recorded as not full years. The years 2014-15 and 2015-2016 are recorded as full, the latter year on the basis of self-employment. I am prepared to accept for the purposes of exercising treaty rights that this history is sufficient. This work record is sufficient for the purposes of HMRC to show contributions for national insurance and hence entitles [the claimant] to pension rights and entitlements once retired. I was provided no good reason why it should not be taken into account in demonstrating that [the claimant] has been exercising his treaty rights in the UK.
 32. I thus find that it shows he has been exercising treaty rights for more than 5 years and hence he has acquired a permanent right of residence. It also shows he has been continuously resident in the UK for 14 years by the date of the decision of the respondent. I have taken into account [the claimant's] level of integration and his offending history. It is stated that people who commit crime, and hence go against the rules of society, that this reduces a person's integration into the society. However, I draw an inference from the records from HMRC that [the claimant] has also been employed and has been self-employed. He also provided evidence that he had recently got married although it seems that the marriage has not stopped his offending behaviour."
21. Ms Brocklesbury-Weller submitted that the HMRC document shows that the claimant did not make any national insurance contributions for the years 2005-2006, 2008-2009 and 2009-2010.

22. However, in my judgement, the position is not entirely clear for 2005-2006 as I have indicated above. It may be that a full year's contributions were made for the year 2005-2006 or (as the judge considered was the case) that only two weeks' contributions were made. However, it is incorrect to say, as Ms Brocklesbury-Weller did, that the HMRC document shows that *no* contributions were made in the year 2005-2006.
23. The period of five years for the purpose of calculating whether an individual has acquired permanent residence does not need to be calculated backwards from the date of the decision. I have therefore considered whether the information in the HMRC establishes that the claimant has been exercising Treaty rights for a continuous period of five years.
24. The table above shows that the claimant made national insurance contributions for 2003-2004 until 2007-2008, save that the position for the year 2005-2006 is not clear.
25. However, even if it is the case that the HMRC document shows that the claimant made national insurance contributions for the full year 2005-2006 so that he had acquired permanent residence by the end of the tax year 2007-2008, the fact is that:
 - (i) the HMRC document does not mention the years 2008-2009 and 2009-2010;
 - (ii) it further states that no contributions were made for the years 2011-2012 and 2012-2013 and that there was a shortfall in year 2013-2014.
 - (iii) there was no evidence before the judge to show that the claimant was continuously resident in the United Kingdom for the periods mentioned in (i) and (ii) above, i.e. the years 2008-2009, 2009-2010, 2011-2012, 2012-2013 and the part of the year in 2013-2014 when no national insurance contributions were made.
26. The decision letter raises the issue that the evidence submitted by the claimant did not show that he had been continuously resident. This is important because (as stated above) regulation 15(3) provides that the right of permanent residence is lost through absence from the United Kingdom for a period exceeding 2 years. In view of (iii) above, there was simply no basis upon which the judge could have concluded that the claimant had acquired the right of permanent residence and not lost it by the date of the decision.
27. For the reasons given above, the judge materially erred in law in reaching his finding that the claimant had a permanent right of residence. There were material gaps in the evidence before him, for the reasons given above.
28. Given that the judge materially erred in law in reaching his finding that the claimant had a permanent right of residence, he also materially erred in law in reaching his finding that the claimant had the enhanced protection, i.e. that the claimant's case is an imperative grounds case.
29. I turn now to consider whether the judge materially erred in law in his assessment of claimant's case at the lowest level of protection.
30. In this regard, the judge had to consider two questions, as follows:
 - (i) whether the claimant represented a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society; and

(ii) if so, whether the decision is proportionate.

31. At para 36 of his decision, which concerned his assessment of the claimant's case on the highest level of protection, the judge said that the claimant was a persistent offender and that his risk of harm and his re-offending behaviour did not come near to imperative grounds. The finding that the claimant's offending behaviour does not come near to imperative grounds cannot stand in view of Vomero and my decision that the judge erred in law in finding that the claimant was entitled to protection at the highest level. The finding that the claimant was a persistent offender is relevant to the assessment of the claimant's case at the lowest level of protection.

32. The judge's assessment of proportionality is set out at paras 40-54, which read:

"Proportionality

40. There are a number of considerations listed in regulation 27 of the regulations (See above). I have had careful regard to those considerations in this appeal.
41. I have set out [the claimant's] criminal record above.
42. It is stated that [the claimant] entered the UK in 2003. He has provided evidence from HMRC as to his insurance contributions.
43. Even if [the claimant] could not establish permanent residence for the purposes of the EEA Regulations it would be necessary to take into account [the claimant's] overall length of residence in the UK in forming my decision.
44. It is stated that [the claimant] has family members in the UK but they did not attend the appeal hearing to support [the claimant]. I do not know if they remain in the UK.
45. It is stated that [the claimant] has a partner. I have little information regarding this person. I do not know if they remain in the UK and the extent of their relationship and contact with [the claimant].
46. In the circumstances, I can only give little weight to the relationship between [the claimant] and his partner.
47. I have set out the nature and quality of [the claimant's] claimed private and family life above. If [the claimant] represents a genuine, present and sufficiently serious threat to society it would be necessary to balance those factors against that risk.
48. I have considered the case of Essa and the issue of rehabilitation. This is a factor which must play a part in my deliberations under the regulations. This factor is the prospects of rehabilitation as between this country and Portugal, and an awareness of the interest "of the European Union in general."
49. I have little information that [the claimant] has engaged with rehabilitation in the United Kingdom. I note he has numerous convictions.
50. I have had particular regard to the comments in paragraph 35 of ESSA and whether there are reasonable prospects of rehabilitation and whether [the claimant] is a present threat and whether he is likely to remain so for an indefinite period in the future. It was stated in paragraph 35 of ESSA that appellants who act with impulses to commit sexual or violent offences and the like, may well fall into the category where little weight is given to rehabilitation as a factor.
51. I give little weight in my assessment to the factor of rehabilitation.
52. In reaching my decision I have considered the result of a deportation to Portugal of [the claimant] and the interference with his free movement rights and his relationship with his partner.

53. I have carefully balanced all the factors in this case and the issues raised in respect of the proportionality of the decision. [the claimant] is 33 and arrived at the age of 19. He has spent 14 years of his life in the UK.
54. In all the circumstances I find that the decision of the respondent is a disproportionate response based upon the limited information before me.”
33. The finding at para 52, that the deportation would interfere with the claimant's relationship with his partner wholly contradicts para 45 where the judge said that he has little information about the partner, that he does not know if the partner remains in the United Kingdom or the extent of their relationship and extent of the partner’s contact with the claimant. At para 44, the judge said that he did not know if the claimant's family members remain in the United Kingdom. At para 49, he said that there was little information as to whether the claimant had engaged with rehabilitation in the United Kingdom and therefore, at para 51, he said that he gave the factor of rehabilitation little weight.
34. It is therefore clear from the judge's overall reasoning at paras 40-54 that he found that the decision was disproportionate because the claimant had spent 14 years in the United Kingdom from the age of 19 years to 33 years. He did not in fact conduct a balancing exercise in relation to proportionality, taking into account this finding that the applicant was a persistent offender. Accordingly, not only did the judge speculate that the claimant had been continuously resident in the United Kingdom since 2003, given the gaps in the evidence before him as I have explained above, he failed to conduct a balancing exercise to reach his decision on proportionality.
35. I have therefore concluded that the judge materially erred in law in reaching his conclusion that the decision was disproportionate.
36. Accordingly, I set aside the judge's decision to allow the appeal under the Regulations.
37. In relation to the human rights claim, para 117 of the decision letter states that the claimant had been previously served with a notice under s.120 of the Nationality, Immigration and Asylum Act 2002. The judge therefore had jurisdiction to consider the claimant's human rights claim (Amirteymour [2017] EWCA Civ 353).
38. It is clear from para 56 of the judge's decision that he relied upon his assessment of proportionality under the EEA Regulations in order to allow the appeal in relation to human rights (Article 8). I have concluded that the judge materially erred in law in reaching his finding on proportionality under the Regulations. I have therefore also concluded, for the same reasons, that he materially erred in law in reaching his decision to allow the Article 8 claim.
39. I therefore set aside the decision of the judge in its entirety.
40. I have proceeded to re-make the decision on the claimant's appeal.
41. For the reasons given above, given the gaps in the evidence, as explained above, I am not satisfied that the claimant has been exercising Treaty rights in the United Kingdom for a continuous period of 5 years so as to acquire a permanent right of residence. In the alternative, and given the gaps in the evidence as explained above, I am not satisfied that, if he had acquired the right of permanent residence, it had not been lost under regulation 15(3).

42. I am therefore not satisfied that the claimant has the medium level of protection or the highest level of protection. I have decided his case on the basis that he has the lowest level of protection. I therefore consider the two issues identified at para 28 above.
43. I find that the claimant's criminal convictions show that he is a persistent offender. There is little or no evidence that he has engaged with rehabilitation in the United Kingdom or developed any insight into his offending behaviour. He has been in breach of community orders including a community order with a DRR. In all of the circumstances and giving such weight as I consider appropriate, I find that the claimant presents a high risk of re-offending.
44. I take into account para 7(h) of Schedule 1 of the Regulations which states that the fundamental interests of society in the United Kingdom include "*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)*".
45. For the reasons given at paras 42 and 43 above, I find that the claimant is a genuine and present threat to the fundamental interests of society in the United Kingdom.
46. The question is whether he is a sufficiently serious threat. Both the level of harm and the risk of re-offending are relevant.
47. In deciding the level of harm he poses, I have considered his previous convictions as set out at paras 2 and 9 above, the sentences passed and the fact that he has been in breach of community orders including a community order with a DRR.
48. Whilst the individual offences are not such, in themselves, as to lead to a finding that the claimant is a genuine, present and sufficiently serious threat, the fact that 16 offences were committed over a period of 6 1/2 years is sufficient to lead to my finding that he does present a sufficiently serious threat to the fundamental interests of society.
49. I turn to consider proportionality.
50. The claimant first arrived in the United Kingdom in 2003. Plainly, the periods during which he resided in the United Kingdom, as evidenced by the HMRC document, show some integration. However, as explained above, there are gaps in the evidence as to his residence. It has not been shown that he has lived continuously in the United Kingdom since 2003. In particular, there are gaps of more than two years. The gaps in the evidence cover significant periods. It is for him to show that he has been integrated into the community in the United Kingdom. In addition, his persistent criminal offending also shows a lack of integration notwithstanding that he has not received a sentence of immediate imprisonment.
51. In all of the circumstances and for the reasons given above, I have concluded that, whilst there is evidence of the claimant's integration, the evidence does not show significant integration.
52. On the question of rehabilitation and the prospects of rehabilitation in the United Kingdom as compared with Portugal, para 47 of the decision letter states that he does not have family members in the United Kingdom. There is no evidence to the contrary. There is nothing to suggest that the claimant has any support network in the United Kingdom to aid his rehabilitation in the United Kingdom. To the contrary, he has been in breach of community orders including a community with a DRR. There is little or no evidence that the claimant has engaged with rehabilitation in the United Kingdom.

There is therefore nothing to suggest that his prospects of rehabilitation will be materially prejudiced if he is deported to Portugal. There is no evidence that rehabilitation will not be available to him in Portugal. In any event, I am satisfied that any interference with his rehabilitation is proportionate and justified given the risk that he poses to the public.

53. The claimant speaks Portuguese. There is no evidence whether his partner is in the United Kingdom. He has lived in Portugal for 19 years. He arrived in the United Kingdom in 2003 and whilst he has lived in the United Kingdom for extended periods as is evident from the table I have compiled from the information in the HMRC document, the evidence does not show continuous residence since 2003.
54. Having carefully balanced all factors in this case, I find that the claimant's deportation is proportionate.
55. I therefore dismiss the appeal under the Regulations.
56. I turn to the Article 8 claim.
57. The claimant has not produced any evidence that he enjoys family life with any partner or dependent child. Accordingly, his right to family life does not fall for consideration, whether under Appendix FM or outside the Rules.
58. In relation to the claimant's private life claim under para 276ADE, he does not qualify on the basis of his age and length of residence under para 276ADE(1)(iii)-(v).
59. Only para 276ADE(1)(vi) falls for consideration. The question is there would be very significant obstacles to the claimant's integration into Portugal.
60. At para 14 of its judgment in SSHD v Kamara [2016] EWCA Civ 813, the Court of Appeal gave guidance concerning the concept of reintegration. This was adopted by the Court of Appeal in SC (Jamaica) [2017] EWCA Civ 2112 at para 61. Para 14 of SSHD v Kamara reads:
 - "14. ..., the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."
61. The claimant has lived in Portugal for 19 years. It is not known whether he returned to live in Portugal during the periods for which there are gaps in the HMRC document. I therefore leave this aside and do not take that into account in reaching my decision on para 276ADE(1)(vi). Nonetheless, when he left Portugal, he was old enough to have become thoroughly familiar with his culture. He speaks Portuguese.
62. In all of the circumstances, I find, in the words used at para 14 of SSHD v Kamara, that the claimant will be enough of an insider in Portugal in terms of understanding how life in Portugal is carried on. He has a capacity to participate in it so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in the

society in Portugal and to build up within a reasonable time a variety of human relationships to give substance to his private life.

63. In all of the circumstances and for the reasons given above, I find that there would not be very significant obstacles to the claimant's reintegration in Portugal.
64. Accordingly, I dismiss the claimant's Article 8 claim under the Immigration Rules.
65. In relation to the Article 8 claim outside the Rules, the claimant's private life claim has been fully addressed under the Rules in the context of para 276ADE. His family life does not fall for consideration.
66. Paras 71-76 of the decision letter deal with an Article 3 claim based on the claimant's medical condition. The issue in relation to medical treatment in this case is that the claimant was receiving methadone. There is no evidence to show that the claimant's condition is sufficiently serious such as to reach the high threshold in N v SSHD [2004] UKH 31 or the slightly lower but nonetheless still high threshold in Paposhvili v Belgium 2016 ECHR 1113 (AM (Zimbabwe) v SSHD [2018] EWCA Civ 64). Furthermore, para 73 of the decision letter states that there is medical treatment available in Portugal. There is no evidence to the contrary.
67. In these circumstances, I find that there are no substantial grounds for believing that the claimant's deportation will be in breach of his rights under Article 3 due to his medical condition.
68. I therefore dismiss his appeal on human rights grounds.

Decision

The decision of Judge of the First-tier Tribunal Burnett involved the making of a material error of law sufficient to require it to be set aside.

I set aside the decision of the judge in its entirety.

I have re-made the decision on the claimant's appeal against the Secretary of State's decision.

I dismiss his appeal under the EEA regulations and on human rights grounds.



Signed
Upper Tribunal Judge Gill

Date: 29 August 2018