



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

Appeal Number: EA/05877/2017

THE IMMIGRATION ACTS

Heard at Field House

On 5th October 2018

**Decision & Reasons
Promulgated
On 20th November 2018**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**KEVIN ENSSA CAMARA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms L Kenny, Home Office Presenting Officer

For the Respondent: In person

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Juss promulgated on 23 July 2018, in which the Appellant's appeal against the decision to remove the Appellant under regulation 23 of the Immigration (European Economic Area) Regulations 2016 dated 8 June 2017 was

allowed, albeit on a different basis. For ease I continue to refer to the parties as they were before the First-tier Tribunal, with Mr Camara as the Appellant and the Secretary of State as the Respondent.

2. The Appellant is a national of Portugal born on 14 June 1967, who claims to have entered the United Kingdom with his mother, also a Portuguese national, in 2011.
3. The Respondent's decision to remove the Appellant was on the basis that he was not a person exercising treaty rights in the United Kingdom.
4. Judge Juss allowed the appeal in a decision promulgated on 23 July 2018.

The appeal

5. The Respondent appeals on the ground that the First-tier Tribunal Judge wrongly considered that the decision under appeal was a deportation one with findings made in that context and allowing the appeal under Regulation 21(5)(c) of the Immigration (European Economic Area) Regulations 2016 and Article 8 of the European Convention on Human Rights. However, no deportation decision had been made, the decision under challenge was for removal for failure to exercise treaty rights in the United Kingdom.
6. Permission to appeal was granted by Judge Mailer on all grounds on 6 August 2018.

Findings and reasons

7. At the oral hearing, both parties confirmed that the decision made in respect of the Appellant which was the subject of his appeal was a decision to remove dated 8 June 2017. Similarly, both parties confirmed that there was no decision to deport the Appellant dated 11 August 2017 or otherwise.
8. Judge Juss' decision begins in the first paragraph by identifying the decision under appeal as a decision to deport the Appellant under section 5(1) of the Immigration Act 1971 dated 11 August 2017, by reference to regulations 23 and 27 of the Immigration (European Economic Area) Regulations and subsequently reference was made to an earlier decision of 6 June 2017 to remove the Appellant. The decision then records the evidence and submissions of the parties which were all clearly directed to the decision appealed, the decision to remove dated 8 June 2017.
9. In paragraphs 13 to 24 of the decision, the Judge Juss sets out the legal framework solely in relation to deportation of an EEA national under regulations 21 and 27 of the Immigration (European Economic Area) Regulations 2016 and caselaw relevant to those provisions. In paragraph 25 of the decision he expressly states that this is the basis on which he is approaching the appeal and proceeds to determine the appeal on that basis in paragraphs 26 and following.

10. The decision contains an egregious error of law in that Judge Juss has proceeded to determine an appeal against a deportation decision which has never been taken by the Respondent. There is not even a hint or suggestion in any of the papers on the appeal file of any deportation decision or any decision dated 11 August 2017 and similarly nothing that suggested that there was at the hearing before the First-tier Tribunal either. The Judge is entirely mistaken as to the nature of the decision under appeal and therefore considers the appeal on an entirely false premise without making any findings relevant to the actual decision under appeal, the decision to remove dated 8 June 2017. The decision must therefore be set aside.
11. At the oral hearing before me, there was no dispute as to the facts or the error of law made by the First-tier Tribunal. The parties agreed that the matter is appropriately remitted to the First-tier Tribunal as the Appellant has not had a fair hearing of his appeal nor have any relevant factual findings been made in relation to the actual decision under appeal. A fresh hearing on the basis of the actual decision under appeal is required.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal and remit the appeal for a de novo hearing before the First-tier Tribunal (Birmingham) to be heard by any Judge except Judge Juss.

No anonymity direction is made.

Signed 
November 2018

Date 15th

Upper Tribunal Judge Jackson