



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00125/2020

THE IMMIGRATION ACTS

Heard at Field House
On 25 November 2021

Decision & Reasons Promulgated
On 15 December 2021

Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR JOSE CARLOS RODRIGUES
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms A Everett, Senior Home Office Presenting Officer
For the Respondent: Ms A Smith, Counsel, instructed by Wilson Solicitors LLP

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Peer dated 6 June 2021 which allowed the appellant's appeal against deportation. Permission to appeal was granted by the Upper Tribunal in a decision dated 26 August 2021.

2. The appellant is a national of Portugal born on 1 November 1974. He is now aged 47 years old.
3. On 10 January 2020 and 13 January 2020 the respondent made a decision to deport and a deportation order against the appellant. The appellant's criminal offending which led to that action is set out in paragraphs 3 to 9 of the First-tier Tribunal decision. The offending behaviour covered a period from 19 June 2019 to 29 November 2019 and consisted, in the main, of repeated offences of shoplifting but also included an offence of possessing a knife in a public place and common assault. The highest sentence of imprisonment for 22 weeks to be served consecutively was for five counts of shoplifting, the sentence being imposed on 25 September 2019. There were other sentences of eighteen weeks' imprisonment, thirteen weeks' imprisonment and one week of imprisonment.
4. The appellant appealed against the respondent's decision to deport under Regulation 36 of the Immigration (European Economic Area) Regulations 2016 (the EEA Regulations). The appellant maintained that he had obtained permanent residence as he had been working in the UK since coming here in 2014. He provided documents to support this submission in addition to his own evidence and that of his mother. His documentary evidence included his records with HMRC, bank statements, documents concerning employment and a letter from the DWP dated 24 April 2019 setting out his right to reside. The respondent did not accept that the appellant had acquired a permanent right of residence such that he could benefit from the "serious grounds" protection against deportation.
5. In paragraphs 61 to 63 Judge Peer set out the case law relevant to an assessment of whether someone was conducting economic activity such that they could be found to be a qualified person for the purposes of the EEA Regulations. In paragraph 62 of the decision the judge set out the summary provided in the skeleton argument of the appellant's economic activity in the UK. Applying the case law on the requisite level of economic activity to the evidence, Judge Peer found that the appellant had shown that he was a qualified person and had been so for five years.
6. The respondent's appeal against the decision of First-tier Tribunal Peer was brought on a narrow basis. The respondent maintained that the First-tier Tribunal Judge failed to take into account a DWP document entitled "Minimum Wage Earnings Threshold" dated 1 March 2014. This document referred to a requirement introduced from 1 March 2014 onwards for an EEA migrant to show that in the previous three months they had been earning a minimum of £150 a week in order to be able to show that they had been in genuine and effective work for the purposes of assessing benefit entitlement.
7. There were a number of reasons why I did not consider that this ground had any merit. Firstly, Ms Everett conceded that there was nothing available to her to indicate that this was a document that the respondent considered should be applied generally in cases concerning EEA nationals. She also accepted that nothing suggested that the document had been brought to the attention of Judge Peer in this case.

8. Secondly, having studied the DWP document, it is clear that it does not address the question of whether an EEA national is a qualified person for the purposes of the EEA Regulations. The DWP document seeks to distinguish between two categories of EEA nationals for the purposes of assessing benefit entitlement. One category identified is that of “worker”, an EEA national who met the £150 a week/3 month requirement and who would be eligible for additional benefits. The second category identified was that of “jobseeker” who would still be eligible for some benefits but not to the same extent as the “worker” category. The assessment of whether someone is entitled to which particular benefit is an entirely different question to that which arose here as to whether the appellant was a qualified person for the purposes of the EEA Regulations. Further, the level of earnings identified in the DWP document as relevant to a benefit claim was wholly different to that identified as relevant here, as set out in the case law correctly identified by Judge Peer. It did not appear to me, therefore, that the DWP document had any bearing on the assessment to be made here and it could not be an error that it was not taken into account.
9. Thirdly, as set out by Ms Smith in her Rule 24 response dated 11 November 2021, the Upper Tribunal (Administrative Appeals Chamber) found in the case of RF v London Borough of Lambeth (HB) (European Union law - workers) [2019] UKUT 52 (AAC) that the DWP document was not law but guidance. Further, RF also found that even if someone was not earning £150 for the requisite 3 month period, the DWP document merely indicated that this required a further assessment to be made in order to establish any entitlement to benefits. It was therefore clear from this decision that someone could still be found to be a genuine and effective worker from a broader range of evidence than merely earnings in a prior 3 month period.
10. Fourthly, regardless of the terms of the DWP document, the First-tier Tribunal was provided with a letter dated 24 April 2019 from the DWP setting out that this appellant was considered to be “a person who retains worker status”. It was not suggested before me that the judge was not entitled to place significant weight on that document.
11. For all of these reasons, I find that there is no error in the decision of the First-tier Tribunal that the appellant had established that he had permanent residence and was entitled to have the “serious grounds” threshold applied in his appeal.

Notice of Decision

The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed: *S Pitt*

Date: 7 December 2021

Upper Tribunal Judge Pitt