



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

Appeal Number: IA/38089/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 20<sup>th</sup> March 2015**

**Decision &  
Promulgated  
On 9<sup>th</sup> April 2015**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**MR MAJID ALMEKDADY  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr B Buncock, Counsel

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of the Netherlands born on 11<sup>th</sup> February 1961. On 7<sup>th</sup> May 2013 the Appellant's solicitors applied for a document certifying his permanent residence in the United Kingdom. Within that application the Appellant stated that he had been permanently incapacitated from 1<sup>st</sup> August 2007 up to and including the date of his application and provided documentation. On 4<sup>th</sup> September 2013 the Secretary of State refused the Appellant's application on the grounds that

the Appellant did not meet Regulation 5(3) of the Immigration (European Economic Area) Regulations 2006 in that the Appellant had it was submitted failed to provide sufficient evidence to show that he had exercised treaty rights as a permanently incapacitated person. It was contended that the Appellant had not provided evidence that he had resided in the United Kingdom continuously for more than two years prior to the termination or that the incapacity is the result of an accident at work or an occupational disease that entitled him to a pension payable in full or in part by an institution in the United Kingdom. It was consequently decided to refuse the confirmation that the Appellant sought with reference to Regulations 15(1)(c) and 5(3) of the Immigration (EEA) Regulations 2006.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Clapham at Taylor House on 5<sup>th</sup> November 2014. In a determination promulgated on 4<sup>th</sup> December 2014 the Appellant's appeal was allowed under the 2006 Regulations.
3. On 11<sup>th</sup> December 2014 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. The basis of those Grounds of Appeal were that the First-tier Tribunal Judge had failed to give adequate reasons for finding that the Appellant was unable to work due to his incapacity for the period September 2007 to May 2008. On 26<sup>th</sup> June 2014 First-tier Tribunal Judge Kelly granted permission to appeal. On 12<sup>th</sup> February 2015 a detailed Rule 24 response was served by the solicitors instructed by the Appellant.
4. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel Mr Buncock. The Secretary of State appears by her Home Office Presenting Officer Mr Jarvis.
5. Mr Jarvis takes me to the medical report to be found in the Appellant's bundle and whilst contending that paragraph 12 of the First-tier Tribunal Judge's determination which assesses the medical report is not as specific as it could be having looked at the medical report he acknowledges that it shows more than the author of the Grounds of Appeal contend that it did and that he has to accept that the judge was entitled to consider the historical period and the history behind the Appellant's incapacity. On such basis Mr Jarvis indicates that, subject to the Tribunal being prepared to agree, he would wish to withdraw the Grounds of Appeal on behalf of the Secretary of State.
6. Having given this matter due consideration and pursuant to the Upper Tribunal Rules I grant permission to the Secretary of State to withdraw his appeal.

## **Notice of Decision**

In such circumstances it is recorded that the appeal of the Secretary of State is withdrawn and the decision of the First-tier Tribunal do stand.

The First-tier Tribunal did not make an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. No application is made to vary that order and none is made.

Signed

Date **23<sup>rd</sup> March 2015**

Deputy Upper Tribunal Judge D N Harris

## **TO THE RESPONDENT** **FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date **23<sup>rd</sup> March 2015**

Deputy Upper Tribunal Judge D N Harris