



**Upper Tribunal
(Immigration and Asylum Chamber)
DA/00462/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 8 March 2019**

**Decision & Reasons Promulgated
On 16 April 2019**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MARCO ALEXANDRE VAZ MORENO MARTINS
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Walker, Senior Home Office Presenting Officer
For the Respondent: Ms A Radford, Counsel instructed by Turpin Miller,
solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of the respondent against the decision of the Secretary of State that the present respondent should be deported.
2. The respondent (hereinafter the claimant) is a citizen of Portugal. In very broad terms he is an EEA national who has been in the United Kingdom and has acquired rights as an EEA national which makes him harder to deport.
3. In any cases involving EEA nationals it is fundamental to establish precisely what rights have been acquired. Very often a person has established a permanent right of residence and that makes him irremovable unless there are serious grounds. Sometimes a person will have established ten years' rights of residence and can only be removed on imperative grounds. Not many people

are in that category because of the way the law operates. Frequently a period of imprisonment, which prompts a deportation order, will break the term of continuous residence and with the result the “imperative grounds” test is not the relevant test.

4. It is often not entirely straightforward to determine from a quick look at the papers whether a person has acquired the necessary period of residence and whether or not it has been interrupted. In such a case where it is appropriate to make a concession then a concession should be encouraged because it will save a great deal of unnecessary court time. It will only be very unusual circumstances where the Secretary of State will seek to deport somebody where the imperative grounds test applies because it is a very hard test to satisfy. It is plain, as Mr Walker has conceded, (but in doing so he was doing no more than stating the glaringly obvious) that this is not a case where the imperative grounds test is satisfied. There are no imperative grounds for this person’s deportation.
5. When the case came to be decided in the First-tier Tribunal it is quite clear that the judge thought that the Secretary of State had conceded that the imperative grounds test was relevant. The judge has been approached and has made a short statement. It has been disclosed to the parties, and I set out now the judge’s comments. He said:

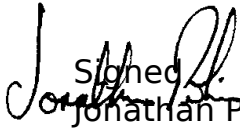
“I recall this specific appeal because it was acknowledged by Mr XXX (that is the Presenting Officer) that the SSHD had not applied the correct test which should have been ‘Imperative Grounds’. It was an area that I was not familiar with and had to undertake some legal research before I was able to prepare my written decision. I agree with Mr Gilbert’s recollection on this point. I could have phrased my observation in my decision at para 8 more clearly by stating that the sole issue related to imperative grounds. As indicated it was not an area of law that I was familiar with and hence noted down that which [the Presenting Officer] had highlighted from the outset of the hearing.”
6. Thus the judge who tried the case said that “imperative grounds” was agreed to be the relevant test.
7. I have played a part in this case before the hearing. I have given directions and in response to those directions there is a statement from Counsel and from the Presenting Officer.
8. Counsel was Mr Andrew Gilbert and in a statement dated 23 October 2018 he said that he recalled and confirmed from his contemporaneous record that the Presenting Officer had said during his closing submissions “on the evidence he (the claimant) has certainly been exercising treaty rights since 2001, and on his evidence since 1999. The imperative ground test must be taken as the test”. In other words Mr Gilberts recalls the Presenting Officer conceding that the imperative ground test was the relevant test.
9. This was all a bit of a surprise to the Presenting Officer who has produced a statement in which he makes clear that that is not what he thought he had done and it was not his intention and that makes sense because, quite unlike Mr Walker’s concession this morning, it is not a concession that is *obviously* right.
10. However in order to find any weight in the Secretary of State’s case I either have to find that the judge and Counsel are wrong in what they tell me

happened or that they are right but the concession had no effect in law. I cannot see any reason why the last argument should carry any weight and Mr Walker did not advance it. The concession was a concession of fact and in broad terms such concessions are binding.

11. The only sensible conclusion that I can reach is that the Presenting Officer said something he did not mean to say. Very few of us can say we have never done something like that but it was acted on and binds the Secretary of State and I can see no alternative but to dismiss the Secretary of State's appeal because the decision that was complained of was made on a concession made by the Presenting Officer which the Tribunal was entitled and probably obliged to accept.
12. It follows therefore that I dismiss the Secretary of State's appeal against the First-tier Tribunal's decision.

Notice of Decision

The Secretary of State's appeal is dismissed.


Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 12 April 2019