Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/02083/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 11 September 2014	**On 7 October 2014**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

VICTOR TAVARES

Respondent

Representation:

For the Appellant: Mrs R Pettersen, a Senior Home Office Presenting Officer
For the Respondent: Ms G Loughran, instructed by Turpin & Miller Solicitors

DETERMINATION AND REASONS

1. The respondent, Victor Tavares, was born on 28 March 1984 and is a citizen of Portugal. He was sentenced on 13 October 2011 to a term of imprisonment of six years at Snaresbrook Crown Court for possession of a prohibited firearm and ammunition without a certificate.

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2. On 10 October 2013, the appellant made a decision to deport the respondent. The respondent appealed to the First-tier Tribunal (Judge A W Khan; Mr A P Richardson JP) which in a determination promulgated on 30 May 2014, allowed the appeal. The Secretary of State now appeals, with permission, to the Upper Tribunal. I shall hereafter refer to the appellant as the respondent and to the respondent as the appellant as they appeared respectively before the First-tier Tribunal.

3. The Tribunal found that the appellant could only be deported from the United Kingdom on imperative grounds because he had been resident in the United Kingdom for ten years. The respondent asserts that the Tribunal failed correctly to apply the judgment in *MG* [2014] EUECJ C-400-12.

4. The grounds assert that the appellant's ten year residence should have been calculated backwards on the date of the decision to deport (10 October 2013) and that the appellant "would need to show ten years' continuous residence in the United Kingdom preceding that date, however his ten years was broken by his imprisonment."

5. Ms Loughran, for the appellant, submitted that, although the Tribunal had failed to refer to the *MG* (judgment delivered by the court on 16 January 2014) its determination was not flawed by legal error. Indeed, in all cases where imprisonment had occurred prior to an expulsion order, the necessary ten year period would be broken by that period of imprisonment and no applicant could possibly achieve a period of ten years' residence. Ms Loughran submitted that *MG* made provision for a period of ten years to have been accrued prior to imprisonment (as in the present case – this appellant arrived in the United Kingdom in 1999) and that that residence could be "taken into consideration as part of the overall assessment required in order to determine whether the integrating links previously forged with the host Member State have been broken."

6. I agree with that submission. It is clear from a number of passages in the determination that the Tribunal was satisfied that the appellant had integrated into United Kingdom society and had done so during his pre-imprisonment period of residence since 1999. There is, therefore, nothing in the determination and reasoning of the Tribunal which contradicts the principles of *MG*.

7. Mrs Pettersen, for the Secretary of State, submitted that the Tribunal had failed to explain why it had accepted that the appellant had been in the United Kingdom exercising Treaty Rights at all times during the claimed pre-imprisonment period of residence. There were, she submitted, gaps in the appellant's evidence showing his residence or, more particularly, that he was exercising Treaty Rights during those periods. There had been a gap of approximately one year after the appellant had left school and before he attended college and a further period of three years between leaving college and starting employment as a support worker.

8. Ms Loughran submitted that the reasoning of the Tribunal was adequate in this regard. At [23] the Tribunal recorded that it had

> taken into account all the witness statements and the oral evidence as well as the documentation contained within both the appellant's and respondent's bundles. We are satisfied that the appellant has been resident in the UK for at least ten years on the basis that there is clear evidence to support this, for example confirmation from Lewisham College that the appellant attended from 10 September 2001 until he withdrew from the college on 10 February 2004.

9. In the same paragraph, the Tribunal refers to other items of evidence of the appellant's residence during the relevant period. The Tribunal made the explicit finding that there was "no evidence that the appellant's residence has been broken by extended visits to Portugal." It is true that the Tribunal does not refer to the exercise of Treaty Rights by the appellant but, given that the Tribunal has accurately set out the relevant parts of the Regulations in its determination, there was no reason to suppose that by referring to "residence" the Tribunal has had in mind residence whilst exercising Treaty Rights.

10. The Secretary of State was represented before the First-tier Tribunal but the representative does not appear to have submitted that the appellant may have been resident in the United Kingdom yet not exercising Treaty Rights. I agree with Ms Loughran that the reasoning of the Tribunal [23] is adequate to deal with the exercise of Treaty Rights throughout a ten year period prior to imprisonment. I find also that, whilst it does not refer to the judgment, the determination is consistent with the reasoning in *MG*.

11. It follows, therefore, that the Tribunal was correct at [24] to go on to consider whether the appellant represented a threat to public security. The grounds of appeal make no challenge to that part of the determination and I find that the Tribunal has had proper regard to the seriousness of the appellant's criminal offending, the judge's sentencing remarks and the OASys evidence in reaching its conclusion that the appellant was not a threat to public security. It follows, in turn, from that finding that the Tribunal did not err in law.

12. Even if I am wrong, then I find that the Tribunal's alternative findings in respect of five years' permanent residence and Article 8 ECHR are likewise not flawed by legal error. There was some dispute of fact as to whether or not the Presenting Officer before the First-tier Tribunal accepted that the appellant had acquired permanent residence. Mrs Pettersen was unable to clarify the position with Mr Grennan, the Presenting Officer.

13. In the light of my findings regarding the ten year period (see above) the dispute does not appear to be material and I find no reason to disagree with the Tribunal's finding at [29] that there was no credible evidence "to show that the appellant's personal conduct represents a genuine, present

and sufficiently serious threat affecting one of the fundamental interests of society."

14. The Tribunal made very clear findings that the appellant had taken steps to address his offending behaviour and that he was "very motivated" to change and rehabilitate. Likewise, referring to those same factors, I see no reason to interfere with the Tribunal's conclusion at [33] that the appellant (who has resided in the United Kingdom since the age of 14; he is now 30 years old), disproportionate by reference to Article 8 ECHR.

15. In the circumstances, the Secretary of State's appeal is dismissed.

<u>DECISION</u>

16. This appeal is dismissed.

Signed   Date 30 September 2014

Upper Tribunal Judge Clive Lane