Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00335/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 17 February 2016	**On 24 February 2016**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

[D B]
~~**(NO ANONYMITY DIRECTION MADE)**~~

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: The Appellant appeared in person
For the Respondent: Mr K Norton, Senior Home Office Presenting Officer

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
No anonymity direction was made by the First-tier Tribunal. On the facts of this case, it is not necessary for an anonymity direction to be made.

DECISION AND REASONS

Background

1. The Appellant appeals against a decision of First-Tier Tribunal Judge Page promulgated on 8 October 2015 ("the Decision") dismissing the Appellant's appeal against the Secretary of State's decision dated 29 July 2015 making a deportation order against him under section 5(1) Immigration Act 1971 and the Immigration (European Economic Area) Regulations 2006 ("the EEA regulations"). The decision to deport is based on the Appellant's convictions for fourteen criminal offences between 10 April 2003 and 1 June 2015

2. The Appellant is a national of France. He claims to have entered the UK in 1995. He has a daughter who is aged six years old who suffers from autism. He is estranged from his daughter's mother. He seeks to remain in the UK in order to continue access to his daughter. He also points out that he has been in the UK for twenty years.

3. There was some evidence before the Judge of the Appellant's economic activity in the UK between 2002 and 2009. However, the Judge did not accept that the Appellant had established that he is entitled to permanent residence under the EEA regulations due to lack of evidence at various periods of time. The Appellant accepted before me that he produced little evidence to the Judge about what he has been doing in the UK. He says that he has been working on and off throughout the period since 1995. He accepted before me that he produced no documentary evidence about his employment history such as tax records, payslips etc. The Appellant said that he was unable to work for periods due to his mental health. Again, the Appellant accepts that he has not produced any documentary support for this assertion such as medical records. There are letters in the bundle from his GP which testify as to the Appellant's mental health problems. However, those do not say how long he has been registered with the GP and for what period and between what dates he has been unable to work due to his mental health issues. There is no written statement in the bundle from the Appellant giving particulars of his employment or periods of ill health and no attempt to particularise his periods of employment and sickness.

4. Permission to appeal was granted by Upper Tribunal Judge Plimmer on 9 December 2015 on the basis that the Judge may have erred in failing to take into account when determining whether the Appellant was entitled to permanent residence the Appellant's own evidence that he has been working throughout his time in the UK save when he has been in prison. As I note at [3] above, that was not in fact the evidence before me as the Appellant says that he has been working other than when he has been in prison or has been unable to work due to his mental health. I accept however that a "qualified person" under regulation 6 of the EEA regulations includes a person who is temporarily unable to work as the result of an illness (regulation 6(2)).

There is no express restriction on the period to which this applies (unlike the case of involuntary unemployment).

5. This appeal comes before me therefore to determine whether the Judge made an error of law in the Decision when finding that the Appellant was not entitled to permanent residence. This in turn would impact on the level which applies to determining whether the Appellant's deportation is justified on grounds of public policy and public security. If I find that the Decision contains a material error of law, the parties agreed that I should remit the appeal for hearing before a different Judge.

Submissions

6. The Appellant appeared in person. As such, I permitted him to say what he wished to in support of his case. He explained that he has been working in the UK but is prone to bouts of depression. He attempted suicide in 2013. He has on occasion been hospitalised. He said that he could get medical records to verify the periods when he was ill and tax records or payslips to verify his periods of employment but he accepted that those were not produced to the Judge at the First-tier Tribunal hearing. He said that he has been in the UK for most of his life. He says that he came here when aged nineteen and has done a variety of jobs. He did not though tell me when he was working where. I noted the chronology in his case indicated that there were two periods when he might have been eligible to claim permanent residence. The first was from 1995 until 2003 when he was first sentenced to a term of imprisonment. The second was from the end of that period of imprisonment until December 2008 when he was again imprisoned. However, there was a long period from April 2004 to March 2007 when there is no documentary evidence (or indeed evidence from the Appellant himself) to show what he was doing. The Appellant indicated that he was sick at that time. He provided no further particulars although said he could given time.

7. Mr Norton on behalf of the Respondent submitted that this appeal turned on the (lack of) evidence. Based on the paucity of evidence produced by the Appellant, even taking into account his oral evidence, this is a case where the Judge could only have reached the one conclusion that he did. Mr Norton pointed out that the Respondent's decision took issue with whether the Appellant could show that he was exercising Treaty rights for a five year period and the Appellant was therefore aware that he needed to demonstrate that he had.

Discussion and conclusions

8. The Judge set out the evidence on which the Appellant relied at [5] to [8] and [15] to [21] of the Decision. As I have noted at [4] above, the Appellant's oral evidence as to what he had been doing in the UK

since his arrival was that he had "always been working" when he was not in prison [21]. The Appellant did not say as he did before me that there were long periods when he was not in fact working but had been unable to work due to ill health (other than in relation to the period at the date of the hearing as set out at [19]). In light of that evidence, it was not incumbent on the Judge to go behind the Appellant's case that he was working. However, the Judge was entitled to consider what evidence there was that he had in fact been working throughout the period when he was not in prison. In addition to the documents produced by the Appellant himself which as the Judge notes did not assist his case on this issue [18], the Judge was taken to evidence produced by the Respondent which related to the Appellant's ex-wife's application for permanent residence. This is set out at [23] of the Decision. This showed that the Appellant was working intermittently between 2002 and 2009 but was sentenced to a term of imprisonment in April 2003 and again in December 2008.

9. There was no documentary evidence in relation to the period prior to 2002 and the only documentary evidence that the Appellant was even physically present in the UK at that time was that the Appellant was cautioned in relation to theft in 1999. As I have noted at [6] above, even in relation to the period from mid 2003 to December 2008 which is the only other period that the Appellant could rely upon to support a finding that he is permanently resident, there is a long period from April 2004 to March 2007 about which there is no documentary evidence. The evidence set out at [23] was produced to the Respondent by the Appellant's wife to support an application for a permanent residence card in relation to her. I can therefore only assume that if there had been documentary evidence showing that the Appellant was economically active (or indeed sick as he now says is the case) for that period, this would have been produced.

10. As I have noted above at [8], the Appellant's oral evidence before the Judge was that when he was not in prison, he was working. His oral evidence to me is that he was sometimes working but there were periods when he was unable to work and was off sick. Even before me, that evidence was very vague as to the periods concerned. It is apparent from what is said at [21] of the Decision that the Appellant's oral evidence was similarly vague before the Judge. There is no witness statement from the Appellant and therefore no detail of the employment which he claims to have had during the relevant periods nor for what periods he was unable to work. The Judge cannot be expected to simply accept such vague evidence as establishing to the requisite standard that the Appellant was physically present and economically active in the UK. He was entitled to have regard to the documentary evidence which did not support a finding that the Appellant was entitled to permanent residence for the reasons which the Judge gives at [25] of the Decision.

11. I am satisfied that the Judge properly understood and took account of the evidence before him. He could not be expected to do more. As the Judge notes at [9] of the Decision, the burden is on the Appellant to establish the facts on which he relies on a balance of probabilities. The Appellant failed to do this. I am therefore satisfied that the Decision does not contain any error of law. As I pointed out to the Appellant at the hearing before me, if he has evidence which would support an entitlement to permanent residence (that is a five year period during which he has not been in prison and when he has been either working or unable to do so due to illness), it is open to him to produce that to the Respondent with submissions that the deportation order should be revoked.

DECISION

For the foregoing reasons, I am satisfied that the Decision of the First-Tier Tribunal does not contain an error of law. The Decision of First-Tier Tribunal Judge Page promulgated on 8 October 2015 is hereby confirmed.

Signed  Date 23 February 2016

Upper Tribunal Judge Smith