



Upper Tribunal
(Immigration and Asylum Chamber)

DA/00352/2019 (P)

THE IMMIGRATION ACTS

Decided under rule 34

Decision & Reasons Promulgated
On 03 August 2020

Before

UT JUDGE MACLEMAN

Between

PAULO JORGE De PEREIRA FAVAS

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS (P)

1. This is an appeal against the decision of FtT Judge Cockerill, promulgated on 10 December 2019.
2. The appellant sought permission on 4 grounds, the headings of which may be summarised as:
 - [1] Procedural unfairness, through refusal of an adjournment.
 - [2] Failure to provide clear findings, or adequate reasons, on whether the appellant had a right of permanent residence.
 - [3] Incorrect legal test.
 - [4] Proportionality.

3. Grounds [3] and [4] overlap with [2], and add little.
4. On 16 January 2020, FtT Judge Osborne found ground [1] to be arguable, but did not restrict the grant of permission.
5. On 5 May 2020, the UT issued directions with a view to deciding without a hearing whether the FtT erred in law and, if so, whether its decision should be set aside. Parties were also given the opportunity to submit on whether there should be a hearing.
6. In a response dated 7 May 2020, the SSHD does not seek a hearing, and submits, in summary:
 - (i) the appeal had a long history by the time of the hearing, and there was no unfairness in deciding to proceed, for the reasons given by the FtT at [25];
 - (ii) as the appellant said he was not registered with HMRC, and did not document his work history, adjournment for HMRC records would not have helped his case;
 - (iii) as he could not qualify for a higher level of protection, grounds [1] – [3] failed;
 - (iv) ground [4] was only a disagreement.
7. No response has been received from the appellant.
8. In the circumstances, the UT may now fairly and justly decide the above issues, in terms of rules 2 and 34, without a hearing.
9. The SSHD's submissions are well made.
10. The appellant could have no grievance, as matters stood at the time of the hearing, over not being allowed further delay.
11. In *Bano* [2019] UKUT 00416 (IAC), the UT said that, "*Unless unfairness has resulted in there being no proper consideration of their case at all, appellants who allege procedural unfairness may find it difficult to have a decision set aside, without showing that they may have suffered prejudice through inability to present a better case*".
12. The appellant has had even more time, but has not tried to show that he had any better a case to present, if given the chance.
13. Given his own evidence, there is no reason to think that HMRC records might have improved his position.
14. Grounds [2] – [4] go nowhere, unless [1] had been made out, and without production of evidence which might have shown a right of permanent residence.
15. The decision of the FtT shall stand.
16. No anonymity direction has been requested or made.

17. The date of this determination is to be taken as the date it is issued to parties.

Hugh Macleman

UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.