



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

First-tier Tribunal No:
DA/00499/2018

THE IMMIGRATION ACTS

Decision & Reasons Promulgated
On the 31 January 2023

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

PEDRO MANUEL DE SOUSA VARELA RUBIN
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms Ahmed, Senior Home Office Presenting Officer

For the Respondent: Mr Mupara, Counsel instructed by UK Migration Lawyers Ltd

Heard at Field House on 1 December 2022

DECISION AND REASONS

1. This is an appeal by the Secretary of State. However, for convenience, I will refer to the parties as they were designated in the First-tier Tribunal.
2. The respondent is appealing against a decision of Judge of the First-tier Tribunal Buckwell (“the judge”) promulgated on 25 July 2019 allowing the appellant’s appeal on the basis that deporting him would be contrary to the Immigration (European Economic Area) Regulations 2016 (“the EEA Regulations”). The EEA Regulations have now been revoked but they are applicable in this case.
3. The level of protection afforded to EEA nationals under the EEA Regulations whose deportation is contemplated depends on whether they have a right to permanent residence under regulation 15 of the EEA Regulations and on whether

they have resided in the UK for a continuous period of at least ten years prior to the decision to deport them. Where a person has both a right of permanent residence and has accrued ten years of continuous residence they can only be deported on “imperative grounds of public security”: regulation 27(4) of the EEA Regulations.

4. The judge found that the appellant had a right of permanent residence and had accrued a continuous period of at least ten years living in the UK such that regulation 27(4) applied. The judge also found that the respondent had not established that the high threshold of “imperative grounds of public security” was met.
5. The grounds of appeal argue that the judge was wrong to apply the imperative grounds threshold in regulation 27(4) because there was a gap in the appellant’s evidence of continuous residence and therefore 10 years of continuous residence had not been established. The gap in the evidence identified in the grounds is between April 2008 and June 2009. The grounds submit that the judge failed to appreciate that there was no documentation such as P60s establishing residence and employment during this period.
6. At the hearing Mr Mupara drew my attention to P60s for the years 2007 – 2008, 2008 – 2009 and 2009 – 2010 in the appellant’s bundle that was before the First-tier Tribunal; ie P60s covering in full the period that the grounds say is unaccounted for by P60s. After reviewing the P60s in the bundle, Ms Ahmed accepted that the evidence that was before the First-tier Tribunal appears to show that the appellant was in employment in the UK during the period the grounds contend is unaccounted for.
7. Having considered for myself the evidence that was before the First-tier Tribunal, I am in agreement with Mr Mupara that the grounds are based on a mistake about the evidence: they state that the judge failed to appreciate there is a gap in the documentary evidence between April 2008 and June 2009 when in fact there is no such gap. Put another way, as there were P60s before the judge establishing employment during the period April 2008 and June 2009, the judge plainly did not err by failing to appreciate that there was no P60s. The appeal is therefore dismissed.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and stands. The appeal is dismissed.

D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber
23 January 2023