



**Upper Tribunal
(Immigration and Asylum Chamber)
DA/00309/2018**

Appeal Number:

THE IMMIGRATION ACTS

**At: Manchester Civil Justice Centre
Promulgated
On 21st May 2019**

**Decision & Reasons
On 22nd May 2019**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**ABDINASIR AHMED MOHAMED
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr McVeety, Senior Home Office Presenting Officer

For the Respondent: -

DECISION AND REASONS

1. The Respondent Mr Mohamed is a national of the Netherlands born on the 8th April 1991. On the 23rd October 2018 the First-tier Tribunal (Judge Alis) allowed his appeal against the Secretary of State's decision to deport him from the United Kingdom. The Secretary of State now appeals against that decision, contending that in reaching it Judge Alis erred in law. Permission was granted on the 13th November 2018 by First-tier Tribunal Judge Baker.

2. The only ground of appeal is that there was not the evidential foundation before the First-tier Tribunal to justify a finding that Mr Mohamed had accrued a permanent right of residence in the United Kingdom under Regulation 15.
3. Mr Mohamed states that he came to live in the United Kingdom in 2002, when he was approximately 11 years old. He went to school here, and then college. At its paragraphs 32-37 the Tribunal acknowledged that there were gaps in the evidence, but found on balance that it could be satisfied that Mr Mohamed has lived here, as claimed, since he was a child. The Secretary of State does not take issue with that finding. The ground submit that the key question was however whether he had done so "in accordance with the Regulations":

"There is no evidence that his mother was exercising treaty rights as a worker or otherwise, such that the Appellant qualified as a family member. Neither is there any evidence that the Appellant had comprehensive medical insurance in order to qualify in his own right as a student"

4. I am not prepared to find this error is made out for the simple reason that these were not matters placed in issue before the First-tier Tribunal. As the determination makes plain, the case for the Secretary of State (argued before the First-tier Tribunal by HOPO Mr Ogbewe) turned solely on whether Mr Mohamed had been living here since 2002 as claimed:

"32. I am asked to find that he has acquired permanent residence after 2002. Mr Ogbewe did not submit the appellant had not met the requirements of Regulation 15 but argued that he had failed to demonstrate that he had been here continuously for a period of 5 years. He argued that he could have left the country and returned as there were no immigration controls for Dutch nationals"

And more explicitly at paragraph 37: "Mr Ogbewe did not raise any other challenge to compliance with the Regulations".

5. This is an adversarial process. Judges cannot fairly be criticised for failing to make findings on matters that are not placed in issue. It is clear from the determination (and indeed the file note) that the issues were narrowed at the outset of the hearing. Neither the refusal letter, nor the HOPO's cross examination, nor closing submissions make any reference to health insurance or whether the Appellant's mother was exercising treaty rights during the period in question. These are wholly new issues being raised for the first time in the grounds of appeal. Where a Home Office Presenting Officer expressly narrows the issues the First-tier Tribunal is entitled to proceed on the basis of that position. In this case that position was that the only

issue was whether there had been continuous residence for a period of five years.

6. At the hearing before me Mr McVeety pointed out that there did appear to be some confusion about what level of protection the Tribunal had actually been considering. I accept that the determination (and indeed the Secretary of State's grounds) make reference to both five and ten year periods of residence. I am however satisfied that the First-tier Tribunal had properly directed itself to consider whether the Appellant had accrued permanent residence (after a five year period) and in light of Mr Ogbewe's concession (at paragraph 8) it was entitled to allow the appeal on the grounds that it did.

Decisions

7. The decision of the First-tier Tribunal contains no error of law and the determination is upheld.
8. There is no order for anonymity.



Upper Tribunal Judge Bruce
21st May

2019