

LSH
Heard at: Field House
On 8 December 2004

RA (Returning resident: scope of
exception) Dominica [2005] UKIAT
00020

IMMIGRATION APPEAL TRIBUNAL

Corrected transcript of decision given at hearing

Signed: 09.12.2004

Issued: 19.01.2005

Before:

Mr JG Freeman (vice-president)
Mr P Rogers, JP
Dr A U Chaudhry

Between

Secretary of State for the Home Department

appellant

and

respondent

Representation:

For the appellant: Mrs S Poulter

For the respondent: Mr M Khan, barrister employed by Legal Action Forum

DETERMINATION AND REASONS

This is a Home Office appeal in the case of a citizen of Dominica, against the decision of an adjudicator, Mrs P A G Horvath, sitting at Taylor House on 2 March 2004. Unfortunately, the adjudicator did not have any help from a presenting officer at the hearing, although she made a commendable effort to go into all the facts.

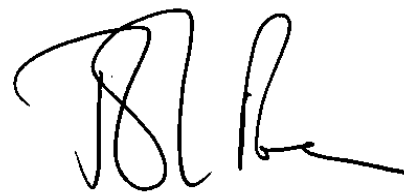
2. This claimant had a long history of residence in this country, latterly on the basis of a passport showing him to be a 'British subject and Citizen of the United Kingdom and Colonies' and endorsed with the right of abode in the United Kingdom, issued on 18 September 1973 and expiring on 18 September 1983. When the claimant tried to renew that passport, having been overseas since 1976, he was refused: there is nothing to indicate why. It seems to us most likely that he would have been entitled at that point to the benefit of § 11(1) of the British Nationality Act 1981, since he had immediately before the commencement of that

Act been a citizen of the United Kingdom and Colonies with the right of abode in the United Kingdom.

3. However, because of the decision in 1983 not to issue the claimant with a British passport, he obtained a Dominican one, on which he later came back to this country as a returning resident. The decision under appeal, which did not either on its face or in the explanatory statement set out the history in anything like the detail it might have been expected to do, refused him entry clearance to return on that basis, because on the last occasion when he had been to this country 20 October 1997 he was given leave to enter for a visit of up to 6 months, and he had since been away from this country for more than two years. Both those facts are agreed by the claimant.
4. So far as being away for more than two years is concerned, that is the consideration referred to in § 18(2) of the Immigration Rules, which is subject to the discretionary exception mentioned in § 19. It was that discretionary exception which took up most of the adjudicator's decision. However, on the claimant's last stay in this country he had only limited leave to enter, referred to § 18(1), which is not subject to the exception in paragraph 19, which reads:

A person who does not benefit from the preceding paragraph by reason only of having been away from the United Kingdom too long ...

5. It follows that the adjudicator was clearly wrong to allow the appeal under the rules on the basis that the claimant was qualified as a returning resident. That is very far from the end of the story, or indeed the real point in this case. That, as we have said, is whether he was before and is now entitled to a full British passport. That is something he has himself sensibly pursued with the Home Office, and we have their reply of 14 September 2004, confirming that he may be eligible for one. We also have Mrs Poulter's assurance that no further action will be taken against him until that question is resolved.
6. It follows that although the **Home Office appeal is allowed**, the claimant may reasonably expect to remain in this country while the question of his right to British citizenship is resolved.

A handwritten signature in black ink, appearing to be 'JF', with a long horizontal stroke extending to the right.

John Freeman

(approved for electronic distribution)