



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/21540/2011

THE IMMIGRATION ACTS

Heard at Manchester

On 2nd July 2013

Determination

Promulgated

On 9th July 2013

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Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

BENJAMIN JAMES BAERWOLF-GODDARD

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:1 Mr J Galvin, Counsel instructed by Rogerson Galvin Solicitors
For the Respondent: Mr McVetie, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge Davies made following a hearing at Manchester on 1st November 2011.

Background

2. The Appellant is a citizen of Germany, born on 23rd October 1981. On 25th July 2007 a decision was made to make a deportation order against him by virtue of Section 5(1) of the Immigration Act 1971.
3. At the date of the Respondent's decision the Appellant had provided evidence of exercising treaty rights from 1st December 2004 to April 2009. He came to the adverse attention of the authorities on 9th July 2010 when he was convicted of conspiracy to commit offences outside the UK at Liverpool Crown Court. He was sentenced to two and a half years' imprisonment.
4. The judge dismissed the Appellant's appeal but did not make a clear finding as to how long he had been in the UK. It was the Appellant's case that he had been here since 2001.
5. The Appellant sought permission to challenge Judge Davies's decision which was granted on 1st December 2011 by Immigration Judge Blandy.
6. On 26th September 2012 Upper Tribunal Judge Coker set aside his decision on the grounds that the judge had failed to make a finding as to the Appellant's residence in the UK.

The Hearing

7. This matter came before me on 2nd July 2013.
8. Prior to the hearing the Appellant produced documentary evidence showing that he had made national insurance contributions from 2001 to 2012. The national insurance record showed that the Appellant had "ten qualifying years up to April 2012".
9. The Respondent also noted that there was a letter from the Appellant's GP which confirmed that he had registered with them as a patient on 28th November 2001 until his records were transferred in December 2007.
10. The Respondent therefore accepted that the evidence indicated that the Appellant has been present in the UK for recordable periods of time.
11. Mr McVetie told me that he was content to rely on the evidence before me and would make no submissions in this appeal save that it was accepted that the Appellant had been here for ten years.

Findings and Conclusions

12. Under Regulation 21(4) a relevant decision may not be taken except on imperative grounds of public security in respect of an EEA national who has resided in the UK for a continuous period of at least ten years prior to the relevant decision.

13. Mr McVetie made no submission that the requirements of paragraph 21(4) could be satisfied in this case.
14. In MG & VC [2006] UKAIT 00053 the Tribunal stated, in relation to the phrase 'imperative grounds of public security'

“We do not think that it is a phrase which is appropriate to cover the ordinary risk to society arising from the commission of further offences by a convicted criminal. That is the risk which has in the past been met by removal decisions based on grounds of public policy.”

15. Between his arrival in the UK in 2001 until the conviction in 2010 the Appellant was not convicted of any offence. He was employed continually during that period in the UK. He committed a single offence, albeit a serious one, having been found in possession of a holdall with 10 kilos of cannabis, the street value of which was approximately £100,000. However, the offender manager accepted that the index offence was committed to pay off debts which had incurred due to his use of cocaine and he was assessed as being of low risk of harm to the public. There has been no re-offending since that offence was committed.
16. During his period in prison the Appellant was drug free as evidenced by negative test results. His probation officer wrote as follows:

“Mr Baerwolf-Goddard is currently assessed as posing a low risk of harm to the public and low risk of offending... Mr Baerwolf-Goddard appears highly motivated to remain drug free. As far as I am aware there is no evidence to suggest he would return to drug use in the six weeks since his release.”

17. The Appellant has strong links with the UK. Since 2006 he has been in a long-term relationship with his partner with whom he entered into a civil partnership in 2007. In May 2007 they purchased their present home. Both are HIV positive but the condition is controlled.
18. The fact that the Appellant has committed no criminal offences, remained drug free and working and in a close personal relationship with his civil partner indicate that there are no imperative grounds of public security which justify deportation in this case. Indeed the Respondent has put forward no argument that he should be removed and in the absence of those arguments being made I conclude that the decision to make a deportation order is not in accordance with the EEA Regulations.

Decision

19. The decision of the judge has been set aside and is re-made as follows. The Appellant's appeal is allowed with respect to the EEA Regulations.

20. As the Appellant has succeeded with respect to the challenge to the decision under the EEA Regulations it follows that it would be disproportionate for him to be deported with respect to Article 8.

Signed

Date

Upper Tribunal Judge Taylor