



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

Appeal Number: IA/43650/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 1<sup>st</sup> July 2014**

**Determination  
Promulgated**

**On 26<sup>th</sup> August 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MR CONSTANTONE HENDRIC DIAS  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr David Williams (LR)

For the Respondent: Mr Nigel Bramble (HOPO)

**DETERMINATION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Kanagaratnam, promulgated on 10<sup>th</sup> April 2014, following a hearing at Hatton Cross on 14<sup>th</sup> March 2014. In the determination, the judge allowed the appeal of Mr Constantone Hendric Dias. The Respondent Secretary of State, applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## **The Appellant**

2. The Appellant is a citizen of Portugal who was born on 27<sup>th</sup> December 1974. He appealed against the refusal of a residence card by the Secretary of State in a decision dated 10<sup>th</sup> October 2013 under Regulation 20 of the Immigration (EEA) Regulations 2006.

## **The Judge's Findings**

3. The judge had regard to the basic facts before him. These were that the Appellant was born in India, had come to the United Kingdom, and obtained a false Portuguese passport, given that he was born in Goa. While obtaining a national insurance number, he had been arrested and charged with possessing a false identity document. He was sentenced to imprisonment. He was recommended for deportation to Goa. However, having subsequently registered as a Portuguese citizen, a Portuguese passport was issued to him on 10<sup>th</sup> March 2010. He attempted to return to the United Kingdom in June 2010. He was questioned by immigration officials. His deportation order was then revoked on 26<sup>th</sup> February 2013. He was then able to return to the United Kingdom. He then made an application in accordance with the Rules. He had expressed remorse for committing the offence of being in possession of a false identity document. The false name that he had previously used was that of "Michael Dias". Presently, however, he had made his application under his correct name, Mr Constantone Hendric Dias.
4. In deciding the appeal, the judge had regard to the fact that the Appellant could not be refused a residence card on the grounds of public policy, public security, or public health, given that he was a Portuguese national, and was entitled to a residence card, and given that the deportation order had been revoked. In the judge's words, "I cannot imagine the policy considerations which allow the revocation of the deportation order of this Appellant different from those in granting him a residence card" (paragraph 9). The judge held that the Appellant was entitled to a residence card.

## **Grounds of Application**

5. The grounds of application state that the judge erred in law because in cross-examination, the Appellant had confirmed that he had used a false identity when conducted in the Crown Court for possessing a false ID card. The judge did not know what the reasons were for the revocation of the deportation order.
6. On 8<sup>th</sup> May 2014, permission to appeal was granted on the basis that the judge was not placed in a position to reach proper conclusions because he did not know what the reasons were for the revocation of the deportation order.

## **Hearing**

7. At the hearing before me, Mr Nigel Bramble, appearing on behalf of the Respondent Secretary of State, said that he would rely upon the Grounds of Appeal. Second, however, he would make the following submission which was that although there was a error in the judge deciding at paragraph 9 that the Appellant was entitled to a residence card by mere virtue of the fact that the deportation order had been revoked, without knowing what the reasons for the deportation revocation was, nevertheless, this was not a material error. This is because the Home Office file, which Mr Bramble was in possession of, did contain the reasons for the revocation of the deportation order. Clearly under the EEA Regulations, and as a Portuguese citizen, the Appellant was entitled to a residence card. Therefore, the error could not be material.
8. For his part, Mr David Williams submitted that at the First-tier Tribunal hearing the Respondent's file had not been disclosed to the Appellant and they did not know what the reasons for the revocation of the deportation order was. It was now clear that there was a reason and this reason was on the Respondent Home Office's file. Given that this is the case, he would have to agree with Mr Nigel Bramble.

### **No Error of Law**

9. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are those that had been set out by Mr Nigel Bramble. This is a case where the deportation order had been revoked. It had been revoked without there being any evidence of fraudulent conduct or wrong doing in any quarter. Nor was there any evidence of there having been a mistake. The order was withdrawn because in February 2013 it was found that the Appellant had no propensity to commit any further crimes and this was a relevant consideration. Once this had crystallised there could be no basis for a conclusion that the Appellant posed a serious threat to the fundamental interests of society. Once the position as set out had crystallised, the judge was entitled to conclude that that which was relevant to the revocation of the deportation order would also be relevant to the grant of a residence card to this EEA national which was rightfully his due given that he was a citizen of Portugal who qualified also as a EEA national. This being so, there could be no material error of law.

### **Decision**

10. There is no material error of law in the original judge's decision. The determination shall stand.
11. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

8<sup>th</sup> July 2014