



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

Appeal Number: DA/00557/2017 (P)

THE IMMIGRATION ACTS

**Decision under Rule 34
Without a hearing
9th August 2020**

**Decision & Reasons Promulgated
On 13th August 2020**

Before

UPPER TRIBUNAL JUDGE COKER

Between

LAMINE DABO

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS (P)

1. FtT Judge A J Blake dismissed Mr Dabo's appeal against the respondent's decision dated 14th August 2017. He sought permission to appeal on the grounds
 - (a) That the Tribunal had erred in finding the appellant had not been exercising Treaty Rights during his 10 years residence in the UK, and
 - (b) That the judge had erred in his consideration of the impact of his deportation on his three children and their mother.
2. Permission to appeal was granted, according to the 'Reasons', in respect of the first ground only although the heading to the grant of permission does not distinguish between the first and second ground.

3. Directions for the further conduct of the appeal were sent and, in the circumstances surrounding COVID 19, provision was made for the question of whether there was an error of law and if so whether the decision of the FtT Judge should be set aside could be determined on the papers.
4. Neither the appellant nor his solicitors complied with directions. The respondent made written submissions and had no objection to a decision on whether there was an error of law being taken on the papers. There was no response by the appellant or his representatives to the respondent's submissions. I am satisfied that the appellant was, through his solicitors, aware of the respondent's position but has chosen not to respond or make submissions. No application to extend time to respond to the respondent's submissions has been made.
5. I am satisfied that the submissions made on behalf of the respondent together with the papers before me¹ are sufficient to enable me to be able to take a decision on whether there is an error of law in the decision of the FtT and if so whether the decision should be set aside, on the papers and without hearing oral submissions.
6. Although submitted in the application for permission that there was evidence in the bundle that the appellant had been exercising Treaty Rights for some period of time, it was not submitted in the skeleton argument before the FtT or in oral submissions that he had been exercising Treaty Rights such as to enable him to benefit from enhanced protection rights. The skeleton argument merely stated that it was a possibility. Counsel for the appellant before the FtT then specifically conceded that the appellant was entitled, on the evidence relied upon, only to basic level protection – see paragraphs 69 and 105.
7. The FtT judge has not, on the evidence before him and given the submissions of counsel, erred in law in reaching his decision in the context of the basic level of protection.
8. In so far as the second ground is concerned, there is no challenge to the finding that the two daughters are French citizens, that the appellant had, prior to his deportation, limited intermittent contact with his son in Manchester, that there was little or no contact between him and his two daughters during his imprisonment and after his deportation. The judge noted and took account of the children's medical condition and the wife's pending application for settlement. The ground seeking permission does no more than disagree with the finding that it would not be unduly harsh. The weight to be placed on the evidence was a matter for the judge who identified the evidence, considered the impact upon the appellant and upon the children and wife in the context of the evidence as a whole. The findings reached were plainly open to him.
9. There is no error of law in the decision by the FtT judge.

¹ (a) the respondent's bundle; together with PNC record (b) the bundle filed on behalf of the appellant together with NI record and skeleton argument; (c) the decision of FtT judge Blake; (d) The application for permission to appeal and (the grant of permission to appeal.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision; the decision of the FtT stands.

Jane Coker

Upper Tribunal Judge Coker
9 August 2020