IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003731

First-tier Tribunal No: DA/00349/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 14 July 2023

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

JACINTO ANTONIO BRUNO FERREIRA DE MELO
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: No attendance
For the Respondent: Mr N Terrell, Senior Home Office Presenting Officer

Heard at Field House on 13 July 2023

DECISION AND REASONS
(extempore)

1. This is an appeal against a decision of the First-tier Tribunal dismissing the appeal of the appellant to make him the subject of a deportation order. The deportation order was made on 30 October 2020 under the EEA Regulations following the appellant's conviction and being sent to prison for the possession of controlled drugs with intent to supply.

2. The appellant did not appear before me when it was convenient to hear the case at about 11.30 a.m. I asked my clerk to check with the correspondence department to make quite sure that no explanation had been tendered for the appellant's absence and nothing had been received. The appellant has shown himself to be unreliable. This appeal was listed to be heard on 19 May 2023 before Upper Tribunal Judge Keith and Deputy Upper Tribunal Judge Stout. The appellant did not appear and Judge Keith adjourned in the absence of an explanation but gave clear directions about the need for medical evidence if it was the appellant's case that he was not fit to attend. Such evidence was to be

served within 7 days and very detailed directions were given to facilitate service. There has been no response to those directions.

3. I was faced with the absence of an appellant who had been absent on another occasion and had not complied with directions to explain his absence. It is quite clear from the Tribunal records that proper notice of the hearing was sent.

4. Mr Terrell, for the Secretary of State, was able to help about the Secretary of State's dealings with this appellant. The appellant is pursuing another appeal before the First-tier Tribunal. I know nothing about that except that it exists but Mr Terrell was able to confirm that the appellant is engaging in matters connected with that appeal. He is responding to notices and has turned up at a hearing. This is not a case where, to adopt Mr Terrell's phrase, the appellant has "disappeared off the radar". It seems to me therefore that the appellant has proper notice, he has chosen not to attend and does not want to advance his case. I decided to continue in his absence.

5. The first point taken by the appellant, and on which permission was given, is that it was arguable that the First-tier Tribunal Judge had erred by not giving the appellant the benefit of the ten year protection, or rather the enhanced protection that comes with ten years' residence exercising treaty rights. The judge decided that the appellant was not entitled to that protection and the appellant's grounds say that he was wrong.

6. Rather belatedly, through no fault of his, this prompted a Rule 24 notice from Mr E Tufan who I know is an experienced Senior Home Office Presenting Officer. In his Rule 24 Notice, Mr Tufan contended, I find correctly, that the judge was indeed wrong but he was wrong in finding that the appellant was entitled to *any* protection at all in his capacity as an EEA national because he had not established five years' continuous lawful residence. His periods of residence in the United Kingdom had been interrupted by periods of imprisonment.

7. I think Mr Tufan used the phrase "reset the clock" or something similar to describe the process that means a person needs five years' continuous residence to get even the base level of protection and this appellant does not.

8. It follows therefore that the judge erred but erred in a way that was advantageous to the appellant and still dismissed the appeal. It was not a material error.

9. I wish to make it quite plain that I agree with Mr Tufan that the appellant was not entitled even to the base level of protection because he has not established the five years' continuous lawful residence that is necessary to get even that basic level of protection as an EEA national. The judge was just too generous, it was a mistake but it was not a mistake that disadvantaged the appellant.

10. There are other points taken.

11. One is particularly concerning. It is said that the judge showed bias and it was illustrated that the judge had shown bias because he used the word "junkie" to describe the appellant. Now, if the judge had chosen to describe the appellant in that way it would have been startling and probably crass and wrong but that is a very unfair depiction of what had happened. The word "junkie" is used on several occasions in the Decision and Reasons. This is because it is a very long decision which follows very closely the appellant's own case and own evidence and it is a phrase that he uses of himself on several occasions. It is also a phrase, he says, that was used pejoratively against him by other people. It is quite plain from reading the decision that the judge is not calling the appellant a "junkie" but was recording accurately the appellant's own evidence when he

described himself in that way or alternatively complained that somebody else described him in that way. This does not show bias, it shows a rather pedantic consideration of the evidence actually before the judge and is not something in this context for which any criticism is tolerable.

12. There are other grounds that suggest no proper regard for vulnerability but they are not fleshed out before me and they are not explained and I find no merit in them.

13. It follows therefore that I dismiss the appeal for the reasons given. There is no material error of law by the First-tier Tribunal.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 July 2023