

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

HUGO MIGUEL SOARES RODRIGUES

TREACY J

Introduction

[1] The applicant is Hugo Miguel Soares Rodrigues, currently detained in Morton Hall Immigration Removal Centre, Lincoln. He was released from Magilligan Prison on 6 November 2014 and taken into immigration detention following the completion of the custodial element of his prison sentence. A decision has been made to deport the applicant to Portugal. That decision is under appeal to the First-tier Tribunal (Immigration and Asylum Chamber) and is not the subject of challenge in this judicial review.

[2] The applicant seeks leave to challenge a decision of the Home Office made on 11 December 2014 (affirmed following reconsideration on 6 February 2015), to certify the applicant under Regulation 24AA of the Immigration (European Economic Area) Regulations 2006 ("the 2006 Regulations"). Under that Regulation the Secretary of State may certify that, despite the appeals process not having been begun or not having been finally determined, that the person's removal would not be unlawful under Section 6 of the Human Rights Act 1998. The grounds upon which the Secretary of State may certify a claim under Regulation 24AA(2) include (in particular) where the person would not face a real risk of serious irreversible harm if removed to the country or territory to which he is proposed to be removed, notwithstanding that the appeals process has not yet begun and/or been exhausted.

[3] The effect of certification for this applicant is that under Regulation 29 of the 2006 Regulations he will now be removed to Portugal notwithstanding that (i) his appeal against deportation is extant and (ii) that his appeal, on a point of law, (in family proceedings) is also extant. The Secretary of State said that consideration

had been given as to whether the applicant's case should be certified under Regulation 24AA and the Secretary of State considered whether there would be a real risk of serious irreversible harm if the applicant was to be removed pending the outcome of any appeal. The Secretary of State concluded that the Secretary of State did not consider that such a risk existed:

"The Secretary of State does not consider that a risk exists because you can return to Portugal where your father lives, where you would be afforded the same rights as other Portuguese nationals and therefore you would have access to the Portuguese health service. Therefore, it has been decided to certify your case under Regulation 24AA."

[4] On 20 October 2014 the Home Office issued guidance in relation to Regulation 24AA. The guidance states at Section 2.4 under the heading "Section 2 Cases not suitable for Regulation 24AA Certification":

"Decisions to deport pursuant to EEA Regulations where the person has been resident in the UK and exercising treaty rights for a continuous period of at least 5 years and the person has not been sentenced to a period of imprisonment of at least 4 years will not normally be suitable for Regulation 24AA certification."

[5] The grounds upon which relief is sought in this case are set out at paragraph 4 of the Order 53 Statement. A significant part of the applicant's case is predicated on the premise that his case falls within the guidance as one that is not suitable for certification because it is asserted that he has been resident and exercising treaty rights for a continuous period of at least 5 years and has not been sentenced to a period of imprisonment of at least 4 years. In my view, the premise underlying the applicant's submission is fallacious. I am not concerned in these proceedings with the merits of the substantive deportation decision which is under appeal. However, part of that substantive decision dealt extensively with the issue of whether the applicant had established that he had been exercising treaty rights for the relevant continuous period in the UK. Having assessed the evidence before it in that regard the decision maker robustly concluded as follows: "the burden of proof was on you and this evidence just does not go anywhere near proving that you were exercising treaty rights for a continuous period in the UK."

[6] Consistent with that substantive finding the applicant did not therefore fall within the guidance since he has not demonstrated, for the very detailed reasons given in the deportation decision, that he had been exercising his treaty rights for the requisite period. The applicant's reliance upon the guidance to resist his removal under Regulation 24AA is therefore misconceived.

[7] Nor do I accept the applicant's further submission that the decision of the ECHR in Ciliz v The Netherlands [2000] ECHR 365 precludes the removal of the applicant pending the hearing of his appeal on a *point of law* in the family proceedings. His removal does not prevent the possibility of further "meaningful involvement" in those proceedings (see para 71 of Ciliz). The applicant has instructed lawyers and he can still instruct lawyers from Portugal for the purposes of his appeal. It is also clear that consultations can and are frequently conducted via the internet for free through Skype and FaceTime and interfaces of that kind. All that is required is the internet, a smart phone or a computer. Such facilities mean that there is in fact little difference between having a client in one's office and having him on the computer screen. Documents can be exchanged by fax, email, post or courier if required. It has not been demonstrated to this court how the applicant's removal would prejudice his appeal. He already has the benefit of local solicitors and will be able to contact them as and when required by various means. It must of course also be borne in mind that the appeal is on a *point of law* which will not involve the hearing of witnesses.

[7] Against that background there is in my view no tenable argument that the applicant's removal would deny him the requisite protection of his interests as safeguarded by Article 8 and accordingly I find that the applicant has not raised any grounds which have an arguable prospect of success. Leave is refused and the application is dismissed.