

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**QUEEN’S BENCH DIVISION**  
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**Sousa’s (Antonio Jose Gregorio) Application [2015] NIQB 12**

**IN THE MATTER OF AN APPLICATION BY  
ANTONIO JOSE GREGORIO SOUSA FOR LEAVE TO APPLY  
FOR JUDICIAL REVIEW**  
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**TREACY J**

**Introduction**

[1] The applicant in this case is Antonio Jose Gregorio Sousa, who is a Portuguese national. By this application he seeks leave to apply for Judicial Review of a decision by the proposed respondent on 28 January 2015 to certify him under Regulation 24AA of the Immigration (European Economic Area) Regulations 2006 as amended (“the 2006 Regulations”).

[2] On 13 May 2013 the applicant pleaded guilty to the offence of supplying a Class A drug, namely heroin, at Dungannon Crown Court. He was sentenced by Her Honour Judge Loughran to a period of two years’ imprisonment made up of one year’s imprisonment and one year on licence. The applicant has now been released from HMP Magilligan, in or about 14 February 2015, and is currently in immigration detention.

[3] On 25 September 2014 he was informed by the Home Office that he was liable to deportation following his conviction on 13 May 2013. Representations were made on his behalf against the making of a Deportation Order. By letter dated 28 January 2015 the applicant was informed by the Home Office that he was to be deported and that he had a right of appeal to the First Tier Tribunal against the decision to deport him (which he has exercised). The letter further informed the applicant that he had been certified by the Secretary of State under Regulation 24AA of the 2006 Regulations and, in particular, stated as follows:

“Under Regulation 24AA of the 2006 Regulations the Secretary of State may certify that despite the appeals process not having been begun or not having been finally determined the person’s removal would not be unlawful under Section 6 of the Human Rights Act 1998 (public authority not to act contrary to Human Rights Convention). 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 appeal process has not yet begun and/or been exhausted. If your case is certified under Regulation 24AA then pursuant to Regulation 29 you will be removed to the country or territory to which it is proposed that you be removed notwithstanding that the appeals process has not yet begun and/or been exhausted.

Consideration has been given to whether your case should be certified under Regulation 24AA .... The Secretary of State has considered whether there would be a real risk of serious irreversible harm if you were to be removed pending the outcome of any appeal you bring. The Secretary of State does not consider that such a risk exists because you will be deported to Portugal, a member of the European Union where you will enjoy the same rights and privileges as other EU nationals which are the same as those enjoyed by you here in the United Kingdom. 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. This 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 applicant’s central contention before me is that his is a case that falls within the guidance as one that is not suitable for Regulation 24AA Certification as, he asserts, he has been resident in the UK 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. If these conditions are met the guidance says that the decisions to deport will not normally be suitable for Regulation 24AA Certification. Mr Forde of counsel submitted that the Home Office have therefore departed from their own guidance and have given no reason or justification for so doing and that the impugned decision is for that reason vulnerable to public law challenge.

[6] Mr Egan, counsel for the proposed respondent, submitted that the applicant fell outside the guidance as he had failed to provide evidence of when he arrived and of whether he had been exercising treaty rights. He pointed to the irony of the applicant's reliance on his seven convictions in Northern Ireland of drug supply/use in support of his case that he had been resident in the UK and exercising treaty rights for a continuous period of 5 years. The applicant's convictions are conveniently set out at page 32 of the papers and are included in the deportation decision. He has been convicted of 7 counts of drug supply/use between April 2005 and May 2013.

[7] It is clear from the materials available to the court that far from exercising treaty rights, his criminal record shows that he has been involved in the drug trade since at least 2005. I accept Mr Egan's submission that the applicant fell outside the guidance and that the issue of departing from it simply did not arise in this case. The applicant's central contention is therefore rejected and accordingly no arguable case with a reasonable prospect of success has been demonstrated. Leave is refused and the application is dismissed.