



**Upper Tribunal  
(Immigration and Asylum Chamber)** Appeal Number: IA/21098/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26<sup>th</sup> November 2014**

**Decision & Reasons  
Promulgated  
On 16<sup>th</sup> December 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BAIRD**

**Between**

**MR MOURAD LOUNES  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Jacobs - Counsel

For the Respondent: Mr Tarlow - Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by Mourad Lounes, a citizen of Algeria born 31<sup>st</sup> December 1964. He appeals against the decision of the Respondent made on 14<sup>th</sup> May 2013 to refuse indefinite leave to remain (ILR) in the United Kingdom on the basis that he had been here for a continuous period of fourteen years. The Appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Turquet on 18<sup>th</sup> February 2014. The Appellant appealed

against Judge Turquet's decision and on 20<sup>th</sup> August 2014, having heard submissions, I found that there was a material error of law in the determination of the First-tier Tribunal in that Judge Turquet failed to give proper weight to the oral evidence, failed to give adequate reasons for her findings and did not consider the evidence in the round. I set aside her decision with no preserved findings of fact and I now proceed to remake the decision.

2. Briefly the facts of this case are that the Appellant arrived in the UK on 22<sup>nd</sup> September 1994 by ferry at Harwich using an Italian ID card in the name of Matteo Cachiato which he had purchased in Italy along with an Italian driving licence. He went to London where a friend provided him with accommodation for a few weeks. He then went to an agency who managed to find him work in various restaurants. Towards the end of 1998 he registered with Reed Employment Agency and thereafter worked under his real name, Mourad Lounes. He obtained a French ID card and a passport in his real name as a French national and applied for a national insurance card as a French national. He had left Algeria because of the political situation there. He claims to have lived in the UK now for over nineteen years continuously. He says he has no remaining ties to Algeria.
3. The position of the Respondent is that the Appellant had entered the UK in 1994 without a valid travel document, therefore illegally. He had remained here without leave to enter or remain. Although he had provided an HMRC tax letter in the name of Matteo Cachiato as evidence of residence here between 1994 and 2000 he had not provided any payslips or letters from employers for that period and had been unable to provide original valid photo ID to prove that he and Matteo Cachiato were the same person. A photocopy had been provided but the Respondent would not accept this. The Respondent has accepted that the Appellant has been in the UK continuously since 2001 and it is only the period up to then that is disputed. The Secretary of State considered whether the Appellant meets the requirements of Appendix FM of the Immigration Rules or paragraph 276ADE but found that he does not. She also considered the application on Article 8 ECHR grounds but refused it.
4. The Appellant claimed that all his documents confirming his false identity as Matteo Cachiato were lost when the apartment storage cupboard into which he had put them was emptied and cleared. He had put the documents there because the authorities in Glasgow were looking for Algerian people as suspects after the bombing at Glasgow Airport.
5. At the hearing before me on 26<sup>th</sup> November the Appellant provided a bundle of photographs covering the years 1992 to 2012. The

requisite period in this case is as previously stated 1994 to 2000. He provided the tickets he used to come to the UK in 1994.

6. In his statement the Appellant gives the following details of his employment during the early years after his arrival in the UK.
  - In 1995/96 he worked for Gardner Merchant based in Fleet Street. He worked under the head chef Keith Burton for two years.
  - In 1997 he worked in Soho House, Old Compton Road. The owner's name was Nick Jones.
  - In 1998 he worked in St Andrew's Golf Club, Cannon Street for about six months.
  - In 1999 he worked for Premier Agency based in Hounslow. His recruitment consultant was Michelle King. Towards the end of that year he worked for Reeds Agency also in Hounslow where his recruitment consultant's name was Angela Hebditch.
  - In 2000 he started working in his own name Mourad Lounes. That year he worked at the Royal Lancaster Hotel, Lancaster Terrace, London.
  - In 2002 he registered with Reeds Agency and has been doing so ever since.
7. At the hearing before Judge Turquet two of the Appellant's friends gave evidence. They did not attend the hearing on 26<sup>th</sup> November before me but they were present at the previous hearing when the issue of error of law was dealt with. The Appellant said that they had already appeared in court for him on three occasions and they could not get the time off work. I do however have letters from each of them.
8. In a letter dated 13<sup>th</sup> January 2014, Mr Nabil Allal, who is mentioned in the Appellant's initial statement, says that he first met the Appellant in Italy over twenty years ago. He came to the UK in 1994 and the Appellant came just after him. At that time he lived in Earl's Court and the Appellant spent his first couple of weeks in the UK with him. The Appellant then moved to Lewisham and Mr Allal would visit him almost every weekend. Two years later he moved to Hounslow and the Appellant decided to find a place there as well. They would see each other almost every evening after work. The Appellant at that time was working as an Italian citizen called Matteo Cachiato and had a job in London between 1997 to 2000. They kept in touch even after Mr Allal moved to Cardiff in 1999 to take up a job there. He confirms that

the Appellant decided to use his own name in 2000. The Appellant currently lives in Glasgow and Mr Allal meets up with him as often as he can.

9. The second letter is from Mohamed Gara who says that he has known the Appellant for years having met him in 1997 during the Appellant's time at the Bohemia Coffee Shop in London. He would also meet him at St Andrew's Club after he finished his shift there. They still see each other.
10. At the start of the hearing Mr Jacobs confirmed that the Appellant's application had been submitted to the Home Office prior to the change in the Immigration Rules which came into force on 9<sup>th</sup> July 2012. He said he wished to rely on the decision of the Court of Appeal in **ZH (Bangladesh) v Secretary of State for the Home Department [2009] EWCA Civ 8** paragraphs 16 and 17 in which it was said:

“The use of a false identity, which was admitted by the Appellant, was held against him. But no account was taken, as it seems to me it needed to be taken, of the reason he gave for using it: that he was afraid of being detected as an illegal immigrant. That of course compounds the illegality of his presence here but it is a different reason from the more sinister reason for using a false identity, which is to commit frauds.”

11. I heard oral evidence from the Appellant who adopted his statement. At the start of his evidence Mr Jacobs reminded me that the crucial date to establish fourteen years residence is 1999.
12. The Appellant was taken through the bundle of photographs he had submitted. I will not go into them in detail but there is for example one with a date stamp of 1999 showing him in Leicester Square with a friend called Sophia. There is one showing him in Pimlico in 1998 and one showing him with a Spanish girl - his girlfriend in 1999. There is one showing him in Turin with Mr Alam in 1994 before he came to the UK. One was taken at a staff party in a building near the High Court which now belongs to the London School of Economics. He put the date of this at 1995/96. There was one of him with his nephew in London in 2002 when his nephew came to visit.
13. He said that at the time of the Glasgow Airport bombing it was very frightening there. Everyone was talking about it. He heard on the radio that they were looking for Algerian people. Someone tried to break into his flat. His window was broken. He decided to hide all his papers and just keep the ID card and his national insurance card. He showed me this ID card. He had so many documents in both names because he had kept everything. He

had kept the work correspondence, his payslips and bank statements etc. since his arrival in the UK in 1994. He lives in a block of flats on the first floor. There is a cupboard outside the three flats on that floor. Each floor has a similar cupboard. He put all the stuff into a sort of briefcase bag and hid it in the cupboard. A week or so later the cupboard was cleared out and all the stuff went missing. He kept the small ID card in his shaver case under his shaver in his flat. He did not apply for leave because he had no ID documents at that time. He wanted to wait until he had established fourteen years residence under his own name. He then learned in 2012 that he would have to apply before July because the law was about to change so he did this.

14. At page 13 of the bundle there are several photocopies of business cards which he said were the cards for the places he used to work. He went through all of these in detail, explaining what he had done in his efforts to get evidence that he had worked at these places. He went to Soho House to try to speak to Nick Jones but the man he spoke to told him that they had no records prior to 2005. One of the cards is for a company called Shergill & Co. He said that is where the Premier Agency was at the time he worked for them.
15. He agreed that there were discrepancies in the HMRC records. He went to the tax office in Glasgow to try to get corrected records but was told that they would give him nothing unless he had a passport to prove his ID and he does not have that. He provided evidence of his studies in Algeria between 1981 and 1983.
16. He then went through all the jobs he had had between 1994 and 2000, the agencies who had provided him with the work and the work he was doing. He gave details of seven different employers during that period.
17. In cross-examination Mr Tarlow asked him if he had tried to get information from any of these past employers and he explained that he had gone to Soho House and had tried to find St Andrew's Golf Club but it is not there now. Gardner Merchant have gone out of business.
18. He said that the tenants in his block of flats do not have a key for the storage cupboard. You have to go to the landlord and he comes and opens it for you to let you put things in or take them out. He had nothing else in the cupboard - only the bag with the papers in it.
19. In his submissions Mr Tarlow said he would rely on the reasons for refusal letter. He said it boils down to the photographs and the evidence of the Appellant on these. His submission was that the

Appellant has not discharged the burden of proof. He relied on **ZH (Bangladesh)**.

20. Mr Jacobs simply asked me to allow the appeal saying that the Appellant's oral evidence was compelling. He gave a consistent account and it is clear that he was telling the truth.

### **My findings**

21. In this case the burden of proof is on the Appellant and the standard of proof is on the balance of probabilities.

22. The requirements of paragraph 276B relative to 14 years residence in the UK have now been deleted and essentially replaced with paragraph 276ADE of the Rules. The provision applied to those who had 'resided in the UK for 14 years or more either lawfully or unlawfully', the period taken into account to exclude 'any period spent in the United Kingdom following service of notice of liability to removal or notice of a decision to remove by way of directions under paragraphs 8-10A, or 12-14 of Schedule 2 to the Immigration Act 1971 or section 10 of the Immigration and Asylum Act 1999, or of a notice of intention to deport him from the United Kingdom'. The additional requirements were -

(ii) having regard to the public interest there are no reasons why it would be undesirable for him to be given indefinite leave to remain on the ground of long residence, taking into account his:

(a) age; and

(b) strength of connections in the United Kingdom; and

(c) personal history, including character, conduct, associations and employment record; and

(d) domestic circumstances; and

(e) previous criminal record and the nature of any offence of which the person has been convicted; and

(f) compassionate circumstances; and

(g) any representations made on the person's behalf

(iii) the applicant does not have one or more unspent convictions within the meaning of the Rehabilitation of Offenders Act 1974

(iv) the applicant has sufficient knowledge of the English language and sufficient knowledge of life in the United

Kingdom, unless he is under the age of 18 or aged 65 or over at the time he makes his application

23. Paragraph 276B as set out above can only apply to the Appellant if he can establish that he has been in the UK from 1998, the Secretary of State having accepted that he has been here since 2001.
24. It is accepted that there is a dearth of documentary evidence relating to the period 1994-2001. It is accepted that the Appellant came to the UK using a false identity which he continued to use for some years before deciding to start working under his own name. He explained how he lost most of the evidence he had relating to that false identity though he did retain his false ID card. I accept the explanation given because I can think of no reason why he would voluntarily destroy the evidence of his employment yet retain the ID card. There is documentary evidence of his work post-2001 and the fact that he has worked constantly since then gives rise to a reasonable likelihood that if he were in the UK from 1994 to 2001 he would have been working and probably in the same sort of jobs. The evidence of his employment post-2001 is of work in the catering industry, jobs similar to those he claims to have had between his arrival in the UK in 1994 and 2001. As evidence of this work I have, in addition to the Appellant's own evidence, the statements and previous oral evidence of his two friends. I accept that they are the Appellant's friends and that he met Mr Alam initially in Italy. I was impressed with the oral evidence of the Appellant. I did not at any time form the view that he was not telling the truth. He gave a very detailed account of his employment between 1994 and 2001. He indeed only had to cover the period between 1999 and 2001 but gave a full account of his work history in the UK. He gave a very detailed account of his efforts to get evidence including the names of those he worked for and the locations he worked at. His evidence was fluid and natural. On the balance of probabilities I think it highly unlikely that he would have fabricated such a detailed account of his employment when it must have been obvious to him that the Home Office could check it out. His employment record is a significant consideration and clearly, despite the problems with the evidence provided by HMRC, it is clear that he has been paying tax. HMRC would have got all his information for their records from his employers. These records at the very least confirm that he has been working. I do not see anything implausible in the point relied on by the Home Office in the refusal letter that these records show that Matteo Cachiato worked in the UK prior to the Appellant adopting his identity. This is entirely possible.
25. With regard to the photographs, Mr Tarlow submitted that these could just have been taken while the Appellant was on holiday

here but I must consider these photographs in the round with the rest of the evidence. There is nothing from the Respondent to suggest that the Appellant has been in and out of the UK over the years. They have produced no records of visit visa applications. There is no record of him having been questioned at port or of the authorities having any interest in him. I am satisfied that he provided satisfactory evidence of having entered the UK in 1994. In all the circumstances and taking account particularly the compelling oral evidence of the Appellant I accept that he has been in the UK continuously since 1994.

26. The Appellant has no criminal record. It seems that he has lived relatively quietly in the UK throughout his time here. He has not come to the attention of the authorities in any way. He speaks very good English. He has not formed a family life here but clearly has established a private life. It may be said that he is guilty of deception and of deliberately waiting until he had fourteen years residence here before making an application but this does not vitiate his claim under paragraph 276B. He has worked constantly in the UK. I accept that it is likely that in 1994 he came to the UK to escape the troubled situation in Algeria.
27. Having considered all the evidence in the round I find that the Appellant has established that on the balance of probabilities he meets the requirements of paragraph 276B of the Immigration Rules.

### **Notice of Decision**

The decision of the First-tier Tribunal is set aside and replaced with this decision.

The appeal is allowed under the Immigration Rules.

No anonymity direction is made.

Signed  
2014

Date: 12<sup>th</sup> December

N A Baird  
Deputy Upper Tribunal Judge Baird

### **TO THE RESPONDENT** **FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to



make a fee award of one half of the fee paid on the basis that some of the evidence was not before the Respondent when the initial decision was made.

Signed  
2014

Date: 12<sup>th</sup> December

N A Baird  
Deputy Upper Tribunal Judge Baird