



**Upper Tribunal  
(Immigration and Asylum Chamber)** Appeal Number: HU/04577/2016

**THE IMMIGRATION ACT**

**Heard at Field House  
On 11<sup>th</sup> December 2017**

**Decision & Reasons  
Promulgated  
On 14<sup>th</sup> December 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCCLURE**

**Between**

**Mr Yota Eriya  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**And**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr Seelhoff of A Seelhoff Solicitors  
For the Respondent : M Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Mr Yota Eriya date of birth 23 June 1969, is a citizen of Uganda. Having considered all the circumstances, I do not consider it necessary to make an anonymity direction.
2. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Burnett promulgated on 9<sup>th</sup> March 2017 whereby the judge dismissed the appellant's appeal against the decision of the Secretary of State for the Home Department. The Secretary of State

had refused the appellant leave to remain in the United Kingdom as a person that had been resident in the UK for over 20 years.

3. Leave to appeal was granted by Judge Chamberlain on the 6<sup>th</sup> September 2017.
4. The grounds of appeal assert that the judge has given insufficient reasons for going behind a statement contained in a previous letter from the respondent. The letter in question is a letter dated 9 December 2014 page 133-137 of the appellant's bundle. The letter acknowledges that the appellant entered the UK in 1994 and acknowledges that the appellant had twenty years residence in the UK. The letter provides :-  
***Length of time in the UK accrued for reasons beyond of migrants control after the human rights asylum claim has been submitted or refused.***  
*You entered the UK in June 1994 so have over 20 years residency. There have been no delays by the Home Office in dealing with your asylum and human rights application. You have significantly extended your length of residence by delaying the Home Office consideration of your asylum claim not attending Asylum screening interviews during 1994, and also by not departing the UK after your asylum application had been refused and you had no other outstanding applications for leave.*
5. The case on behalf of the appellant is that the respondent has failed to give reasons for resiling from that concession. It is also asserted that the judge has failed to give valid reasons as to why the respondent should be allowed to resile from that concession. The appellant's representative seek to assert that there was no reason for that concession not to be maintained. The representative argued that the provision in the rules to allow an individual to remain after twenty years necessarily meant that an individual had remained unlawfully by various means and that irrespective of the means of remaining an individual by reason of having been in the country for that length of time was given security to stay.
6. I accept that provided an individual can prove that they have been in the UK for twenty years, the means by which in most cases that has been effected is not material. However the individual has to prove that they have resided in the UK for that time. If by reason of the evidence a judge is not satisfied that the appellant has resided in the UK as claimed, then an appellant does not meet the requirements of the Rules.
7. The issue in the present case is whether the respondent has resiled from the letter of December 2014 and whether the judge has considered that reason and assessed the evidence before him.

8. Subsequent to the letter from the respondent, the appellant's representatives advanced the appellant's case for having been in the UK for twenty years. In a letter of 3 September 2015 in order to substantiate that the appellant had not left the United Kingdom and admission was made that the appellant had assumed the identity of another. In the letter it is acknowledged that the appellant had made an asylum claim and that the Asylum decision had been served on the appellant on 16 February 1998. It is acknowledged that the appellant was appeal rights exhausted as of 6 March 1998. The letter then provides:-

*The applicant decided that he wanted to return home and therefore submitted flight ticket to the Home Office departing on 16 October 1998. His claim was therefore noted as withdrawn on the 22 January 2001 by the Home Office.*

*The applicant did not however leave the UK at all and continued to reside in the UK to date. He began using a photocopy of an Indefinite Leave to Remain vignette containing his photograph in the name of George Kavuma and continued to live in the UK. He knew the person George Kavuma was aware that this person had ILR in the UK.*

9. In light of that information the Home Office reviewed their stance with regard to whether the appellant had been in the United Kingdom continuously for 20 years. Whereas previously they had accepted the assertion by the appellant the Home Office look critically at the evidence presented. The Home Office were entitled to take into account what was said in that letter and were entitled to expect the appellant to prove that he had been resident in the UK for the 20 years.
10. The judge did consider the letter, see paragraph 30 and 31, and considered that there had been no critical examination of the appellant's assertion in the original Home Office letter of December 2014. The judge considered the letter and gave valid reasons for expecting the appellant to prove that he had been in the United Kingdom for 20 years.
11. Having regard to the admissions made by the appellant, that he had booked a flight to leave in 1998, the judge looked at the evidence and was entitled to conclude that the appellant had failed to prove that he had been in the UK for the period of 1998-2000. Taking into account the letter and the evidence by the appellant the judge concluded in paragraph 36 that there was evidence lacking that the appellant was in the United Kingdom for the period 1998- 2000. He was not satisfied on the appellant's assertion that he was the person using the identity and address claimed for that period.
12. The 2<sup>nd</sup> ground of appeal is that the judge has failed to consider the evidence in the round. There was an admission by the appellant through his solicitors that he had booked a flight out of the United


Kingdom in 1998. It was therefore for the appellant to prove that he had been in the United Kingdom for that period of time. Clearly the judge having considered all of the evidence was not satisfied that the appellant was in the United Kingdom during that period of time. That was a finding fact that the judge was entitled to make on the evidence.

13. In the circumstances I find that there is no material error of law in the decision by the First-tier Tribunal.

**Notice of Decision**

14. I uphold the decision to dismiss the appellant's application.

15. I do not make an anonymity direction

Signed 

Date 12<sup>th</sup> December 2017

Deputy Upper Tribunal Judge McClure