



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/21804/2016

THE IMMIGRATION ACTS

Heard at Field House
On 28 August 2018

Decision & Reasons Promulgated
On 06 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

EMMANUEL DONKOR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr T. Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal promulgated on 8 March 2018 dismissing on the papers his appeal against the decision of the respondent made on 6 September 2016 to refuse to grant him leave to remain on human rights grounds, including continuous residence for at least twenty years.
2. Permission to appeal was granted by UTJ Finch because firstly the Judge had not taken into account that, if his account was correct, he had entered the UK as a child. Secondly and thirdly:

“The First-tier tribunal judge failed to take into account the evidence provided by HMRC which tends to support his account, at least in part. She also failed to take into account the fact that the Appellant had made two applications for leave to remain on the basis of long residency as long ago as 2005 and which had not been disclosed to her.”

3. At the hearing before me to determine whether an error of law was made out, I noted from an inspection of the file that an appellant’s bundle of documents was contained within it, and that it bore a date stamp indicating that it had been received at Hatton Cross before the expiry of the time limit for the receipt of written evidence from the appellant. However, at paragraph [11] of her decision, Judge Oxlade said that no additional evidence had been filed by the appellant since he had lodged his notice of appeal.

Discussion

4. Mr Melvin settled a Rule 24 response robustly opposing the appeal. But his response was predicated on the assumption that the procedural history set out in the decision was correct. I find that it was incorrect. No criticism thereby attaches to Judge Oxlade, as the probable explanation is that the appellant’s bundle was not linked to the file until after she prepared her decision on 27 February 2018. Hence she was not aware that the appellant’s representatives had filed additional evidence with the Tribunal which she needed to consider.
5. Mr Melvin submitted that the Judge’s inadvertent failure to take into account the additional evidence was not material as the appellant was bound to lose his appeal anyway, having elected for a paper hearing. He submitted that the points raised on his behalf by UTJ Finch were not of such cogency as to enable the appellant to discharge the burden of proof.
6. When giving her reasons for finding that the appellant had not shown that he had been resident in the UK for at least twenty years, the Judge did not mention the evidence provided by HMRC as it was not part of the evidence that was before her. In a letter dated 26 June 2016 addressed to “Mr E Donkor” at an address in London E13, HMRC confirmed that he had been issued with a national insurance number in the tax year 1994-5, and that he had paid NICs at Class 1 in every tax year from 1996-7 to 2009-2010, save for the tax year 1997-8. The above information is contained in a schedule.
7. While the above evidence is far from conclusive, it clearly has significant probative value on the issue of long residence. Thus the Tribunal’s inadvertent failure to take the HMRC evidence into account was potentially material to the outcome.

Notice of Decision

8. The decision of the First-tier Tribunal contained an error of law arising from a procedural irregularity which was capable of making a material difference to the outcome or fairness of the proceedings, and so the decision must be set aside.

Directions

9. **This appeal is remitted to the First-tier Tribunal at Hatton Cross for a de novo hearing before any judge apart from Judge Oxlade. None of the findings of fact made by the previous Tribunal shall be preserved.**
10. **The Respondent shall use best efforts to obtain and serve on the appellant and on the First-tier Tribunal a copy of the determination of 30 December 2004 dismissing the appellant's appeal against the refusal of asylum, because the Tribunal on that occasion also (apparently) addressed a claim by the appellant that he had resided in the UK since 1994.**

Anonymity

The First-tier Tribunal did not make an anonymity direction, and I do not consider that the appellant requires anonymity for these proceedings in the Upper Tribunal.

Signed

Date 01 September 2018

Deputy Upper Tribunal Judge Monson