

**Upper Tribunal
(Immigration and
Asylum Chamber)**



Appeal Number:

IA/09588/2013

THE IMMIGRATION ACTS

Heard at Field House

On 24 June 2014

Determination

Promulgated

On 5 August 2014

**Before
DEPUTY UPPER TRIBUNAL JUDGE DRABU CBE**

Between

**MR NANA AGYEMANG
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: In person

For the Respondent: Mr I Jarvis, Senior Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Ghana. He granted permission to appeal to the Upper Tribunal by Judge Hemingway on 8 October 2013 following the dismissal of his appeal by Judge Bart- Stewart on 19 September 2013 for reasons given in the determination.
2. The appellant had appealed under Section 82(i) of the Nationality, Immigration and Asylum Act 2002 against a decision made by the respondent on 11 March 2013 refusing him indefinite leave to remain on the basis of his claimed long residence.
3. In his application for grant of indefinite leave, the appellant had stated that he entered the United Kingdom on 19 February 1993 with entry clearance as a visitor which was valid until 19 August 1993. The respondent noted that she had been unable to ascertain the appellant's claimed lawful entry. He was considered to be an illegal entrant and when he applied for settlement on the basis of his

claimed long residence on 6 June 2012, his application was refused with a right of appeal.

4. In her letter of refusal the respondent acknowledged that the appellant had produced sufficient documentary evidence to satisfy the respondent that he had resided in the UK continuously between 2007 and present. The respondent listed the evidence submitted by the appellant in support of his claim but for reasons stated in the letter the respondent was unable to accept any of the evidence as demonstrative of the appellant's claim that he had lived in the UK continuously since 1993. His claim was also considered under Article 8 of the ECHR but was found to be lacking in merit as he had no family life in the UK and had produced no evidence of private life too.
5. In his appeal before the First-tier Tribunal (Judge Bart – Stewart), the appellant gave oral evidence which the Judge recorded in paragraphs 9, 10 and 11 of the determination. The appellant told the Judge that he had first come to the UK for business in 1985 and again in 1986, 1991 and 1993. He told the Judge that the last time he came to the UK, he lost his mother and he became desperate. He met a Ghanaian man who gave him money to eat. He then began to work in a hotel. In 1993 the Immigration Service caught him and told him not to work. He then found a lawyer who told him to wait for a letter from him. The Immigration Service, he said had taken his passport and ticket from him. He heard nothing more from the Immigration Service or the lawyer. When he went looking for the lawyer, he was told that he had gone abroad. He said that his wife and five children live in Ghana and that he is in contact with them. His parents are deceased. Four of his children are working and all the children are doing well. His wife, he said, used to help him in his shop and she was still running the shop. He said that he has no money or property in the UK and survives by doing petty part-time work from time to time.
6. Before the First-tier Tribunal, the appellant produced some documentary evidence which included a letter from a Dr Prasad and a letter from Rev Henry Mensah-Bonsu and Asma Miah. Judge Bart-Stewart commenting on the lack of evidence on the appellant's date of entry. The Judge went on to say in paragraph 18 of the determination that "I accept that the appellant resided in the UK between 2006 and 1999. However there is then very little evidence until 2002". However in paragraph 19 the Judge said, "I am prepared to accept that he has lived continuously in the UK from 2002 however I find that he has failed to show that on a balance of probabilities he has been resident in the UK for a period of 14 years as claimed and he therefore fails to meet the requirements of the Immigration Rules."
7. The appellant was granted permission to appeal to the Upper Tribunal by Judge M Hemingway, Judge of the First Tier Tribunal.
8. In granting permission the Judge said, "It is arguable the Judge did not adequately deal with material evidence suggesting the Appellant

had been in the UK prior to 2002. It is arguable the Judge did not carry any evaluation of the Appellant's oral evidence as to his UK history."

9. On 15 November 2013, upon hearing Mr Wilding, representing the respondent at the hearing on that day, I concluded that the grounds of appeal seeking permission to appeal were made out in that the determination of the First-tier Tribunal was indeed in material error of law. Whilst the First Tier Judge had been free to reject the oral evidence of the appellant, I concluded that he had not given proper reasoning for doing so. The Judge had concentrated on the absence of corroborative documentary evidence to the complete exclusion of the oral evidence that he had heard from the appellant. The appellant said that his old passport bearing his name as William Okoh Agyemang with date of birth 4 May 1952 had been taken from him in 1993 during the immigration raid at his place of work and had never been returned to him. After setting aside the decision of Judge Stewart Bart, I directed the respondent to produce the passport of the appellant which it was claimed was in their possession since 1993 and any other documents relating to the seizure of that passport. I directed that such documents be produced ten days before the next date of hearing and be copied at the same time to the appellant and the court. I gave the appellant permission to produce any further evidence, oral and documentary to establish that he has been living in the UK since 1993.
10. The case was relisted for hearing on 18 February 2014. The appellant was present and was accompanied by three persons, two males and one female. The appellant said that they had come to give evidence to support his appeal. The respondent's representative at this hearing, Mr S Whitwell filed a document titled Integrity Report and requested that the hearing be adjourned as no witness statements had been filed and he was being taken by surprise. I reminded Mr Whitwell that his late filing of what was called Integrity Report was as unhelpful as the appellant turning up with "witnesses" whose statements had to be filed in advance. The hearing was adjourned nevertheless but not before I had explained the process and requirements of the appeal to the appellant as well as the three persons who were present in Court. I told the appellant and his "friends" that if they want to give evidence to support the appeal they will have to file their witness statements in ten days in advance of the next hearing and that they would have to be present at the hearing. I repeated the requirement of statements and their attendance more than once to the respondent and the three persons. I made it clear to the appellant that no further adjournments would be granted. He confirmed that he understood what I had said. The hearing was adjourned to the first available date. However as the case was part heard and I fell ill, the appeal could not be re-listed before 24 June 2014.
11. On 24 June 2014, the appellant again appeared unrepresented and had not filed any further documentary statements such as witness

statements as he had been directed to do at the last hearing. He said he had not realised that he had to bring with him his friends to give oral evidence and that their witness statements had to be filed in advance of the hearing. I read out the previous record of proceedings wherein I had recorded what had been said more than once to appellant on this matter. He did not say anything but went on to add that his friends had gone "travelling" and asked that I hear his evidence which I did.

12. In the absence of a representative, I assisted the appellant to give evidence. The appellant mostly repeated what he had said at the First tier Tribunal. He described himself as a businessman and said that he has been coming and going from Ghana to the United Kingdom since 1986. He said he last entered the UK in 1993 as a visitor. He lost his money. He then needed to work and while he was working the Immigration Service people came and told him that he could not work in the UK as he had come as a visitor. They took his passport and told him that he would hear from them. He said he engaged a lawyer who he said had "bailed" him. He did not say that he was arrested. The appellant went on to say that the lawyer had then fallen ill and he did not hear from him again. He then found another lawyer and he was told to report to Beckett House once a week which he did.
13. The appellant further said that he could not now return to Ghana as he has no money and no papers. He said he is in touch with his wife and children. He gave the ages of his five children as 40, 36, 33, 29 and 24. He said that all his children were settled except the last one who was still engaged in education. He said that his wife operates his shop, selling car spare parts. He went on to say that he sends money to his wife but he has not kept "many receipts"
14. The appellant went on to say that if he is given a passport and some money he would go back to Ghana. He said that his intention to return to Ghana had been defeated by the Immigration Service as they took his passport.
15. In cross - examination the appellant said that his passport had been taken away by the Immigration Service in June or July in 1993. He was "bailed" by assistance from a lawyer but he was not given any papers and was told that he would hear from the Home Office directly.
16. He went on to say that he later on discovered that his lawyer had gone to Ghana. He said that he kept looking for him for three years but did not complain to anyone about this lawyer. He said he did not at the time have any money to engage another lawyer. He said he had at the time been working in a bread factory where he remained employed for two years. He did not give the name or address of the factory. He said he does casual work. On being asked about his passport, he said he had obtained it from the Ghana High Commission in 2004. He said it was easy to get it.

17. The appellant agreed that he had not been in contact with the Home Office from 1993 to 2012. He said Poku and he go to Church together. He went on to say that he had not been sent any "Legacy Papers". The appellant then said that in 2013 he was living with his sister in London. His sister and brother had gone to Holland from where they had come and it was about six months ago that they had gone. When asked if he had asked them to attend the appeal hearings or provide support in some other way, the appellant said he had not. That was the end of cross-examination. I asked the appellant if he had anything further to say, he said he did not.
18. I then heard submissions from Mr Jarvis who described the appellant's evidence completely lacking in credibility. He said the story given by the appellant was also totally implausible in that for years he had done nothing to raise the matter of passport with the Home Office. Mr Jarvis described the appellant's evidence as "made up" and drew attention to the total lack of any corroborative evidence to back any of it. He said the appellant had wasted the further opportunity to prove his claim but had failed to do so.
19. Mr Jarvis commented on the letters from the appellant's friends Rev Dr Lamasa Adams, Minister in charge at Elim Pentecostal Church. He said the letter was not worthy of much weight as the Reverend had not offered himself as a witness to give oral evidence. Further the contents of the letter did not say that the Reverend knows that the appellant has lived in the UK continuously since May 1996. Letter from Mabel Agyeman, said Mr Jarvis does not confirm that as members of the same church she can confirm that he has been living in the United Kingdom continuously since 1997 when she first got to know him. With regard to letter dated 3 March 2014 from Stephen Adubofuor, Mr Jarvis said that the same criticisms applied to the contents of this letter as the writer had not given oral evidence. Mr Jarvis drew my attention to the "Integrity Search Detailed Report prepared by the respondent on 15 January 2014. Mr Jarvis relied on the report. Mr Jarvis said that the appeal had remained stagnant for a long time and asked that it be dismissed.
20. I asked the appellant if he wanted to say anything in reply to the arguments advanced by Mr Jarvis. He said there was nothing further to say.
21. At the conclusion of the hearing I formally reserved my decision which I now give with reasons.
22. Reminding myself that the standard to which the appellant has to discharge the burden of proof is no higher than a balance of probabilities, I have concluded that the claim of the appellant must fail. Besides his oral evidence, most of which has been unsatisfactory anyway, the appellant has failed to produce any cogent evidence to support his claim that he has lived in the United Kingdom continuously since 1993. At the two hearings before me, the appellant as unrepresented appellant received counselling from me

as to what and how he could prove his claim. Whilst giving margin for his age and perhaps weak power of understanding, I must not ignore that his failure has been total in producing credible evidence to advance his claim of long residence to satisfy the requirements of the relevant rule. I note that the respondent accepts that the Appellant has been living in the UK continuously since 2007, I have no hesitation in endorsing the respondent's reasons for not accepting that he has lived as such since 1993 as he has claimed. I have read the reasons given by the respondent in support of her decision to refuse the application under paragraph 276B (i) (a) and (i) (B) of the Immigration Rules (b) and I find the reasons are fact based and correct in law.

20. In his evidence the appellant has failed to engage with any of the valid points made by the respondent. His explanations about his passport having been taken by the Immigration Service in 1993 and his lawyer then disappearing are more akin to fairy tales rather than what happens in real life or what is reasonable to have happened. The appellant claims that he was "bailed" at the time his passport was seized or soon thereafter but there is not a single paper to confirm his assertion. Although corroborative evidence is not required but where it is reasonable to expect such evidence, its absence has to be noted. Similarly, claiming that he has lived in the United Kingdom since 1996, it is not unreasonable to expect the appellant to have been more detailed in his history of the places that he stayed at during all these years.
21. I watched the appellant with particular interest as he gave his oral evidence. I am afraid I noticed that he was evasive and most unimpressive as a witness. I did not find him credible. I found the points made by Mr Jarvis in his submissions as valid and powerful. I further find that the reasons given by the respondent in rejecting evidence relating to the appellant's claimed continuous residence in the United Kingdom before 2007 are perfectly sound.
22. As there appears to be common ground that the appellant has lived here continuously since 2007, I have given consideration to his claim under Article 8 of the ECHR and I accept and endorse the reasons given by the respondent for rejecting the claim. He has no family life in the UK and his private life is not such as to make his removal to Ghana disproportionate.
23. In the circumstances and for the reasons given above, I dismiss this appeal on all grounds.

FEE AWARD

Appeal having been dismissed there can be no award.

ANONYMITY DIRECTION

None has been sought and circumstances of the case do not warrant such direction.

Judge Drabu
Judge of the First Tier Tribunal sitting as Deputy Judge of the Upper
Tribunal.
22 July 2014