



IAC-FH-AR-V1

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

Appeal Number: IA/49336/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 15th September 2014**

**Decision Promulgated
On 7th November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**DJEBAR MOKHTAR
(Anonymity Direction Made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr L Doyle, Maliks and Khan Solicitors

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Algeria, born on 1st March 1980, and he made an application on 28th February 2013 for indefinite leave to remain on the basis of his length of residence in the United Kingdom. His application was refused by the respondent on 5th November 2013.

2. In a determination promulgated on 2nd April 2014 First-tier Tribunal Judge Woodhouse dismissed the appellant's application in a determination running to 125 paragraphs both under the Immigration Rules and further to Article 8 of the European Convention on Human Rights.
3. An application for permission to appeal was filed by the appellant's representatives on the basis that the judge had failed to give proper reasons as to why the Tribunal determined that the appellant had been evasive at paragraph 108. With reference to paragraph 109, it was submitted, that the appellant could not go to the bank for copies of his statements as he had no identification and therefore it stood to reason he would be unable to get such documents, and it was unreasonable for the Tribunal to expect the appellant to have collated such evidence. Insufficient reasoning was given at paragraph 110 where the appellant was described as evasive.
4. The Tribunal rejected the evidence of the relationship between the appellant and Miss Abbani but there were consistencies in the appellant's evidence and yet the Tribunal overlooked such consistencies and coherency went on to determine at paragraph 117 that the appellant knew very little of Miss Abbani.
5. Additionally at paragraph 120 the Tribunal gave no reasons as to why it did not find Mr Boussag a witness and a friend of the appellant credible that he did not know of the appellant's alias.
6. Initially the application for permission was rejected but on renewal of the application for permission to appeal to the Upper Tribunal it was submitted that no full and comprehensive assessment of the appellant's Article 8 rights under the five stage proportionality test as set out in **Razgar** had been undertaken. The Tribunal had failed to consider the appellant's case outside the Rules in the spirit of **Gulshan** and **Nagre**.
7. It was also submitted that there had been a failure of reasoning for findings on material matters. Thus the Tribunal had failed to give reasons as per **MK (Duty to give reasons) Pakistan [2013] UKUT 00641**.
8. Upper Tribunal Judge Allen granted permission on the basis that there had been no full assessment in relation to Article 8.
9. In a Rule 24 response the respondent submitted that the judge found that the appellant had not established he had been residing in the UK for either twenty or fourteen years. The judge did not accept the appellant's account of events, particularly in relation to documents produced from the employer and other evidence from witnesses.
10. In the absence of reliable evidence the judge dismissed the appeal in relation to the immigration rules.

11. At the hearing before me Mr Doyle submitted that the judge had made no finding as to whether the appellant had been here for fourteen years or twenty years.
12. However, what is clear is that this application was made on 28th February 2013 and thus the application was made after 9th July 2012 and would be considered under paragraph 276ADE.
13. Recorded in the notice of appeal is that the appellant had initially instructed McLee & Co Solicitors based in Cuthbert Street, London in March 2012 to submit a SET(O) application on the basis of having completed fourteen years' unlawful residence in the UK. It was claimed that the solicitors were intervened by the Solicitor Regulatory Authority (SRA) and were closed down. Following such closure the appellant had had to chase up the progress of his case only to discover that his application was not submitted prior to the July 2012 changes to the Immigration Rules. As this was a failure on the part of his previous solicitors it was stated that the appellant should not be punished for their failure.
14. At paragraph 121 the judge turned to the letter said to have been forwarded from McLee & Co Solicitors. She recorded that she had received a letter dated 25th March 2014 from Miss Sreeraman at the Home Office who declared that

“As agreed at the substantive appeal hearing I have checked the Home Office file to establish whether the letter from McLee & Co Solicitors has been retained on the file. Unfortunately I was unable to locate any letters from McLee & Co Solicitors on the Home Office file. I have also notified M&K Solicitors that I have been unable to locate the letter.”
15. It was upon this letter that the appellant rested his claim that the judge should have considered his appeal outside the Immigration Rules and it was this letter showing that the appellant had attempted to make an application on fourteen year rule prior to a change in the Immigration Rules and that had it not been for the fact that his solicitors had been intervened he would have been successful. As a result the appellant claims he was seriously prejudiced.
16. Further to **BT (Nepal)** there can be no findings made on the solicitors' alleged misconduct until a complaint has been made to the regulatory body. No evidence was produced to the judge that any formal complaint had been made to the regulatory body by the appellant and the evidence before the First-tier Tribunal was not that a complaint had been registered.
17. Perhaps more surprising is the fact that not only did the Home Office not have the letter but even though it was stated a copy of the letter from McLee & Co was recorded as having been sent by Maliks & Khan Solicitors with the application, there was no copy in their papers and no copy on

their file in support of an allegation that there had been negligence by the solicitors.

18. Mr Doyle stated that the appellant was not in a position to file a complaint in the summer of 2011 but it was open to the appellant to make investigations at the time as to why the solicitors had not filed any application and I note that no action was taken by the appellant until the application was lodged by Maliks & Khan solicitors in the following year. Even if the solicitors had been intervened, in the absence of such a finding that there has been negligence by the solicitors, and without any complaint made by the appellant to the regulatory body before the First-tier Tribunal Judge, I see no evidence to support the contention that the appellant made an application for leave to remain prior to July 2012.
19. The judge made no error therefore in dismissing the appeal further to the Immigration Rules and she made a lengthy assessment of the evidence. Despite the fact that she did not identify that the appellant needed to show either 14 or 20 years residence, I do not find that this would have made a material difference to the outcome as she found that he had not shown he had been in the UK for 14 years.
20. The judge went through the evidence at paragraphs 106 to 122 and explained at paragraph 109 why she considered as he had no evidence that he had ever experienced any difficulties in using his bank account he could not in 2010, when putting together his documentation, have gone to his bank and obtained further statements prior to 2008.
21. The judge also explained in detail at paragraph 110 as to why she found him evasive about the means in which he had obtained his passport .
22. At [112] the judge also gave reasons as to why she rejected the evidence of Miss Abbani as the appellant was “unable to say anything about Miss Abbani other than he had visited her at her home”. At paragraph 113 the judge found again with Miss Kahyleigh Doherty that there was no identity document accompanying the letter and like Miss Abbani she did not attend the hearing.
23. Overall the judge gave reasons throughout her determination as to why she rejected the appellant's evidence.
24. On the appellant's own evidence he claims to have entered the UK on 15th February 1998 and thus he had not lived continuously in the UK for at least twenty years irrespective of whether his claimed arrival was accepted or not. This the judge recorded at paragraph 11 of the determination.
25. The appellant could not succeed under the Immigration Rules and it is under paragraph 276ADE that it falls to be considered.
26. However, I can accept that there is limited reasoning in relation to the Article 8 consideration and this is an error of law. The appellant has some private life in respect of his private life and this has not been addressed. It

is not clear that the judge engaged with the evidence in relation to any form of Article 8 assessment or indeed addressed her mind as to whether the matter should be considered outside the Immigration Rules. Further to **MM Lebanon and Others R on the Application of the Secretary of State for the Home Department [2014] EW Civ** I find that findings as to the appellant's private life and an article 8 assessment are required. I therefore remit the matter to the First Tier Tribunal for consideration of the appeal in relation to Article 8 only.

27. There is a material error in this determination in respect of Article 8 only and the matter should be remitted to the First Tier Tribunal, because of the nature and extent of the consideration required, that is a full engagement with the evidence in respect of Article 8. The judge's findings are preserved to the extent they are set out (106 - 121). It is open to the appellant to produce any further evidence on which he intends to rely.

Signed

Date 23rd October 2014

Deputy Upper Tribunal Judge Rimington