



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/08088/2015

THE IMMIGRATION ACTS

Heard at Field House
On 16 August 2017

Decision & Reasons Promulgated
On 12 October 2017

Before

UPPER TRIBUNAL JUDGE SOUTHERN

Between

LARRY SYLVANS

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M. Al-Rashid, of counsel.

For the Respondent: Mr L. Tarlow, Senior Home Office Presenting Officer

DECISION

1. The appellant, who is a citizen of Nigeria, was first granted entry clearance as a visitor to the United Kingdom in 1981. Since then he has made a significant number of visits, either with entry clearance in that capacity for a specific applied for or on the basis of a multi entrance visit visa issued to him. On 27 April 1996, he was admitted as a visitor and not long after that, on 2 June 1996, he departed to travel to Belgium. He returned to the United Kingdom on 4 June 1996 and sought to be admitted again as a visitor on the basis of the multi-visit visa issued to him. However, on arrival in the United Kingdom he was refused leave to enter because it had come to the respondent's knowledge that the appellant had been in breach of the conditions of his visit visa as he had been conducting a business in the United Kingdom. He was returned to Belgium the same day.

2. Despite this, about two weeks later, on 21 June 1996, the appellant returned to the United Kingdom, making an unlawful entry, and he has remained unlawfully ever since.
3. On 24 June 2015 the appellant made an application for leave to remain on the basis that he had lived continuously in the United Kingdom for at least 20 years so that he met the requirements of para 276ADE(1)(iii) of the immigration rules.
4. In a decision expressed as a refusal to carry out a reconsideration of an earlier decision, the respondent rejected this application, saying that the appellant had in fact been living continuously in the United Kingdom not for the 20 years claimed but for 19 years, that period being calculated from his unlawful entry on 21 June 1996.
5. Although it had previously been the appellant's case that the period of continuous residence should have been calculated from 27 April 1996, when he was admitted as a visitor with a valid visa, Mr Al-Rashid now accepts, correctly, that is not arguable in view of the fact that the appellant was refused entry on 4 June 1996 and returned to Belgium (see para 276A(a) of the immigration rules). Therefore, Mr Al-Rashid accepts that the appellant could not succeed under 276ADE(1)(iii) and so does not pursue the challenge to the finding of the judge to the contrary.
6. The challenge that is pursued by Mr Al-Rashid is this: Contrary to what the judge said at paragraph 12 of the determination, a s120 notice was served on the appellant with the decision to refuse his application and he made a response on 21 June 2016. There was, as the judge recognised, a claim before the First-tier Tribunal that there would be an impermissible infringement of rights protected by article 8 ECHR if leave were not granted. Although it is not suggested now that the appellant could succeed under the immigration rules, it is submitted that the judge should have allowed the appeal outside the rules on article 8 grounds.
7. The main thrust of that submission is that, since the appellant had returned to the United Kingdom, even if by making an unlawful entry, on 21 June 1996, therefore by the date of the hearing, on 16 November 2016, the appellant had been living in the United Kingdom for more than 20 years. Although that did not mean that he satisfied the requirements of 276ADE(1)(iii), because that required such a period to have been demonstrated to have been accrued by the date of an application for leave, it was, in Mr Al-Rashid's submission, a cogent indication that the appellant

had been present long enough to establish a private life that merited the protection of article 8.

8. The evidence before the judge as to the appellant's living arrangements was unsatisfactory. The judge recorded the evidence given:

"The appellant had purchased a property, which he rented out. He said he funded the mortgage payments from the rent. He said he had no recourse to state benefits in the UK. He said that he was living with his cousin AO (other than for a couple of years from 1998-2000 when he had rented a flat). AO let him live rent free and paid all the appellant's bills. The appellant said he did not have to contribute to the household expenses.

AO's evidence was different. His letter said that the appellant had lived with him since May 1995, other than from 2005-2010. However, in his oral evidence he said that the appellant now had his own flat but that he did not have the address, though he had visited there... AO also said that he helped the appellant by giving him £60-70 occasionally but that he did not pay his rent or his bills on a regular basis..."

9. Having found that the appellant had not established 20 years' continuous residence the judge concluded:

"I heard no evidence of any very significant obstacles to the appellant's return to Nigeria. He had made enough money from his various business dealings to be able to purchase a property in the UK and if he were to sell his property (which is in London) he would have sufficient funds to re-start his life in Nigeria.... He was educated and worked in Nigeria for many years. He does not satisfy 276ADE (1)(vi)."

Although the judge then said that she had heard nothing to lead to a conclusion that there were compelling circumstances such as to consider article 8 outside the immigration rules, she went on to say that, if she were wrong about that, having directed herself in terms of "the Razgar principles", and s117B of the Nationality, Immigration and Asylum Act 2002, she saw nothing to justify a grant of leave outside the rules. That was because the appellant's private life had been built during a period when he was unlawfully present in the United Kingdom so that little weight could be given to that in striking a balance between the competing interest in play. The judge rejected Mr Al-Rashid's submission that s117B was not intended to have "retrospective effect" so that it applied only to that part of the appellant's private life established after 2014 when s117B was introduced into the 2002 Act. In my judgement, she was plainly right to reject that submission.

10. I invited Mr Al-Rashid to identify the issues that spoke in the appellant's favour in the article 8 proportionality balance. He pointed to the fact that the appellant had now established 20 years' continuous residence and emphasised that was relevant not just in terms of the likely integration into the United Kingdom but also probable loss of ties with Nigeria. The judge had herself recorded that he had no recourse to public funds.
11. I am entirely satisfied that in dismissing the appeal on the basis that the appellant's article 8 claim could not succeed either within or outside the rules, the judge made no error of law, material or otherwise. This was an appellant who had breached conditions of leave when admitted as a visitor and who had to be returned to the country from which he embarked, only to return unlawfully to the United Kingdom shortly afterwards. He then made no attempt to regularise his stay, instead waiting until he thought, incorrectly as it turned out, that he had accumulated a sufficient period of unlawful residence to ensure success in his application under the immigration rules. As he has been unlawfully present in the United Kingdom while building the private life upon which he now relies, little weight can be given to that as a consequence of s117B(4). Of particular significance in the circumstances of this case is s117B(1) which provides that the maintenance of effective immigration controls is in the public interest. By failing to comply with conditions of entry, making an unlawful entry shortly after being returned to Belgium and remaining unlawfully thereafter the appellant has done much to frustrate the maintenance of effective immigration control. He has been in the United Kingdom for a long period of time but it is plain from the evidence before the judge that he has maintained some links, not least because he has a wife and 3 adult children in Nigeria to whom he sometimes sends money, although he speaks of being estranged from his wife. For these reasons, it is hard to see what outcome was rationally open to the judge other than to reach the conclusions she did that this was an appeal that fell to be dismissed. The reasons that she did provide for reaching her decision were clear and legally sufficient.

Summary of decision:

12. The judge did not make any error of law and her decision to dismiss the appeal is to stand.
13. The appeal to the Upper Tribunal is dismissed.

Signed



Upper Tribunal Judge Southern

Date: 11 October 2017