



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/09164/2016

THE IMMIGRATION ACTS

Heard at Field House
On 3 July 2017

Decision & Reasons Promulgated
On 5 July 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

LYES MOUFFOK
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms P Solanki (instructed by North Kensington Law Centre)
For the Respondent: Mr P Naith (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the appeal of Lyes Mouffok, a citizen of Algeria born 24 July 1970, against the decision of the First-tier Tribunal of 6 January 2017 dismissing his appeal, itself brought against the Respondent's decision of 22 February 2016 to refuse his application made on long residence grounds.
2. The immigration history supplied by the Respondent notes the Appellant's ongoing claim to have physically entered the UK in 1992 and not to have left the country since then. On 9 January 2012 the Appellant submitted an application for leave to remain on Article 8 grounds, which was refused without the right of appeal on 24 January 2013. He applied again in October 2014 and the application was again refused on 17

December 2014. On 6 January 2016 he made the application leading to the present proceedings, on the basis he had now lived in the UK for twenty years.

3. The Secretary of State refused the application on the basis that it was not established that the Appellant had truly lived in the UK for more than 20 years absent some documentary evidence for every year. He did not appear to have any material links in the UK.
4. Before the First-tier Tribunal it was argued that the Appellant had put forward sufficient evidence, taking a sensible approach, to establish two decades of UK residence. He had originally worked with a French ID card in the name Charad Nouredine, at Carrington of Peugeot for six years as a car cleaner, and with agencies such as Blue Arrow thereafter. From 2002 the Appellant had worked in his own name.
5. Supporting evidence was put forward from a number of sources, including live witnesses L K, T Z and A R, and letters from others including R J and M D; a set of bank statements from 2005-2016, and pay slips from 2004, including ones that tallied with entries in those bank statements from the company *Accident Repair*; and interview records and minute sheets from the Home Office's first encounter with the Appellant in May 2011.
6. One strand of supporting evidence comprises a letter from the Appellant's MP whereby she wrote to the Chief Executive of HMRC in May 2014 requesting that HMRC produce any records they held for the Appellant. HMRC wrote to her on 15 July 2014 stating that they held records for Lyes Mouffok from 1992/93 at John Candler Cars, and with other employers through to 1994/1995, 1997/1998 to 2000/2001, 2003/2004, 2007/2008, 2010-2013. A further letter from HMRC recorded that the National Insurance number in the name of Nouredine had been created on 2 July 1992; certain income support and jobseekers allowance claims were recorded as attached to that reference number for a few months in 1996, 1999-2000, and during 2010, though clerical records for those claims had since been destroyed.
7. The First-tier Tribunal found that
 - a. It was not credible that the Appellant would lose his identity documents given their importance to him;
 - b. The national insurance number was simply issued to a person in a particular name and did not necessarily make good the Appellant's claim to provide evidence of his own working history: indeed he admitted that it had at one time been used by someone else;
 - c. It was surprising that the individuals who supported his case had kept in touch with the Appellant over long periods, given he had first met them long ago and it was inherently unlikely that old workmates would stay in touch, rather one would normally socialise with one's present co-workers; and it was unlikely that those friends who claimed to have known him in London over many years would in truth have had the opportunity to maintain social relations given the cost and time taken to travel across the capital;

- d. Applying *Tanveer Ahmed* principles, the concerns as to the Appellant's evidence generally undermined such documentary evidence as he had provided, for example the pay slips.
8. Overall, concluded the First-tier Tribunal, it was probable that the Appellant had worked in the UK from 1992 to 1998 but that it was equally probable that he had gone abroad subsequently, before his return in around 2005. So he might well have lived in the UK for a very significant period, but not for long enough to make good a claim for settlement as of right on long residence grounds. The First-tier Tribunal accepted that the mere fact of unlawful working or use of a false identity should not be held against the Appellant as inevitably defeating his claim, applying *Aissaoui*: however it considered that the individual objections to his credibility that it had identified prevented him from establishing the asserted length of residence.
 9. Given those findings, his human rights claim also failed. There was no evidence establishing that the Appellant would face very significant obstacles to integration in Algeria, where he retained family including his mother. As to his private and family life outside the Rules, he had no family here and a parent alive in Algeria, and siblings who lived abroad, possibly in his home country. He did not have strong ties here given that he had not regularised his status, had depended on goodwill for his accommodation, and had essentially set out to achieve a private life in London, a metropolis where life would always inevitably be beyond his means, given he could never achieve financial independence here.
 10. Grounds of appeal alleged, in summary, that the wrong approach had been taken to the evidence of the witnesses, that too high a standard of proof was expected when assessing the evidence generally bearing in mind the Appellant's lack of immigration status and the concomitant disadvantages that would inevitably ensue in corroborating his account, and that errors had been made in assessing particular documents, particularly the pay slips, bank statements and HMRC records; furthermore the Appellant's original interview records and minute sheets had been overlooked entirely. The errors regarding his length of residence inevitably impacted on the assessment of his private life claim.
 11. A Rule 24 response from the Secretary of State contended that a range of reasons had been given based on a variety of factors. Payslips and the NI number alone could not make good the Appellant's claim.
 12. Ms Solanki made submissions in line with her grounds. The First-tier Tribunal had erred in law in making findings that were too strict and demanded corroborative evidence at a level that was not realistic, rather than taking the evaluative approach that the law demanded. Mr Naith defended the decision below consistently with the detailed Rule 24 response.
 13. I should note that Mr Mouffok returned to the hearing room after the conclusion of proceedings to make an impassioned resolution for the just resolution of his appeal, and Ms Solanki requested that I entertain his unusual plea as she was genuinely

concerned as to his mental health and vulnerability. He explained to me the ongoing distress he felt at the time taken to resolve his case. I sought to explain to him that he was being very ably represented by a law centre with expert counsel, each of whom had done all they could to fight his corner.

Findings and reasons

14. The relevant Immigration Rules are those in Rule 276ADE. I cite only the relevant passages given that no questions arise of suitability.

“Requirements to be met by an applicant for leave to remain on the grounds of private life

276ADE. The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant: ...

(iii) has lived continuously in the UK for at least 20 years (discounting any period of imprisonment)”

15. Permission to appeal was granted on all the grounds pleaded. At the outset, I note that this is a rather troubling appeal, because the First-tier Tribunal gave detailed reasons for its conclusions, and appeared to have regard to much of the evidence that was before it in so doing. Nevertheless, having regard to the binding authorities, it seems to me that there is cause for concern as to whether it misdirected itself in the approach it took.
16. In *Khan* [2016] EWCA Civ 416 the Court of Appeal stated that it was wrong to attempt to restrict the forms of evidence that could satisfy a decision maker as to the length of a person’s residence: it was likely that those lacking status would not have access to “official” documentation. It expressly accepted that non-official but “independent” documents and letters and of letters from neighbours and friends were a relevant source of corroborative evidence. That decision is a manifestation of the more general principle of constitutional law identified in *Pankina* [2010] EWCA Civ 719 §28:

“A policy is precisely not a rule: it is required by law to be applied without rigidity, and to be used and adapted in the interests of fairness and good sense.”

17. In *ZH (Bangladesh)* [2009] EWCA Civ 8 §16 the Court of Appeal warned that the admitted use of a false identity should not be held against a migrant asserting long residence without taking account of the reason given for so doing: and in this regard, fear of detection as an illegal immigrant would need to be recognised as being less serious than a more sinister motive for using a false identity, such as to commit frauds. *Aissaoui* [2008] EWCA Civ 37 also establishes that lengthy periods of illegal working need not defeat such a claim, even where a false identity has been used. Both these decisions are focussed more on the assessment of the good character of a long resident migrant than they are on the different question of the establishment of the credibility of the residence in question. Nevertheless, they are wholly consistent with the subsequent decision of *Khan* in demonstrating the need for a realistic approach to be taken to the assessment of such cases.

18. The long residence and private life routes set out in Part 7 of the Rules are to be contrasted with those outlined in Part 6A which addresses Points Based System applications: the latter make clear provision for a procedure under which only “specified documents” may be put forward as satisfying their requirements. Accordingly, Part 7 applications such as that giving rise to the instant appeal should not be assessed by unrealistically high expectations.
19. The First-tier Tribunal criticised the witnesses on a number of occasions: for the “stream of consciousness” quality of their evidence, from not having “corroborated their meetings from diary entries”, and observes that the Appellant had generally advanced “claims that have been made from non-official sources only” via “patchy” evidence. The Appellant is also criticised for not putting forward evidence from other potential corroborative sources, such as landlords.
20. These expectations are, to my mind, quite inconsistent with the enjoiner in *Khan* to take a pragmatic approach to the evidence that is actually available, rather than criticising an Appellant for failing to put forward material from “official” sources. This in turn may well have contributed to the more surprising conclusions reached below as to the plausibility of certain relationships: it is difficult to be confident in the logic of reasoning predicated on the difficulties faced by people from different parts of London socialising with one another, and upon assumptions that a migrant would maintain relationships only with present, not past, co-workers. Both findings are unduly speculative.
21. Furthermore, there is a general self-direction is made at the outset of the decision, that “I do not accept that he can have ‘blank years’ at any date in the last 20 years and yet succeed under the Rules.” As the Rules contain no such restriction, it can only arise from the First-tier Tribunal’s view of the underlying Guidance. Yet the absolutist approach stated as appropriate by the First-tier Tribunal runs flatly counter to the requirement for a flexible appreciation of policy which is a critical feature of the appellate function.
22. I accordingly conclude that the First-tier Tribunal erred in law and accordingly its decision is unsafe. As the length of the Appellant’s residence is the central issue in the appeal, regarding human rights considerations both inside and outside the Rules, the matter must be reheard afresh.

Note on future listing before First-tier Tribunal

It is not appropriate for the Upper Tribunal to make directions that seek to bind the First-tier Tribunal. However I would draw attention to the administration of the First-tier Tribunal the self-evident distress exhibited at the hearing before me by the Appellant. Serious consideration should be given to the appeal being listed at the first available date.

Decision:

The decision of the First-tier Tribunal contained material errors of law.
The appeal is allowed to the extent it is remitted for hearing afresh before the First-tier Tribunal.

A handwritten signature in black ink, appearing to read 'M.A.S. Symes'. The signature is written in a cursive style with a large, sweeping flourish at the end.

Signed:
Deputy Upper Tribunal Judge Symes

Date: 3 July 2017