



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/20670/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 31 May 2017

**Decision &
Promulgated
On 20 June 2017**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**MR ALAN BUCKMAN
(ANONYMITY ORDER NOT MADE)**

Respondent

Appearances:

For the Appellant: Mr S Whitwell, Senior Presenting Officer

For the Respondent: Mr S Khan, Counsel instructed by Mordi & Co Solicitors

DECISION AND REASONS

1. In this decision, the Appellant is referred to as the Secretary of State and the Respondent is referred to as the Claimant.
2. On 13 March 2017, I concluded that the Original Tribunal (First-tier Tribunal Judge Manyarara) erred in law in a decision promulgated on 26 September 2016 in that the judge allowed the appeal under Article 8 ECHR. The Secretary of State appealed that decision. The judge's

adverse decision in relation to the claim under paragraph 276ADE(1) of the Immigration Rules was, for reasons given, was that the evidence was not sufficient to show he had been in the United Kingdom the required twenty years. The judge was not satisfied that the Claimant had established with evidence that he had been here continuously twenty years.

3. There was no cross appeal seeking to reargue the issue of paragraph 276ADE of the Immigration Rules.
4. I decided that the judge had failed to give sufficient and adequate reasons to show why Article 8 ECHR was engaged and why there were exceptional and compelling circumstances that showed this was a case where the Secretary of State's decision was disproportionate. Accordingly the matter was relisted for hearing on the issue of whether the Article 8 claim succeeded in the context of the application of Sections 117A-C of the 2002 NIAA.
5. Before me a range of evidence was paraded not just on the issue of Article 8. The Claimant argued once again that he had come to the United Kingdom in 1983 and he had not left. He also argued that the implications of removing him, given that he had left his home country of Ghana aged about 9 and come to the UK aged about 12, meant that he was now, at the age of 47, left with no private life in Ghana, no ties to Ghana and he had not set foot in the country for many years.
6. His cousin, Eileen Buckman, confirmed that she was related to the Claimant through her grandfather. She confirmed that the Claimant had lived with her since 1988. She confirmed the support he gave her and the part he played in her life.
7. Grainne Forson gave evidence of knowing the Claimant before he left Ghana, as a child, and that she had met the Claimant about 30 years ago at a party in the UK and they had known each other throughout the years. She identified that she had seen the Claimant on a regular basis and this had always been the case since the 1980s.

8. In addition, a Mr Ash who gave evidence of having known the Claimant for about 30 years and knowing Miss Eileen Buckman well. Mr Ash it seemed to me gave balanced and credible evidence, untainted by exaggeration or elaboration.
9. Their evidence, including that of the Claimant, was tested by cross-examination.
10. The fact is that the Claimant has, for most of the years he has been in the United Kingdom, had no status to remain and such time as he was here and working was during periods when he was pursuing various means to remain. I find, on the evidence, that when told not to work he has complied. The Secretary of State therefore did consider the application on the basis of Article 8 private life considerations. I note that the Secretary of State did not refuse the claim under the Immigration Rules by reference to the Claimant's 'suitability' for leave to remain but simply on the period of the calculation of the twenty years in the UK.
11. It seems to me that there was evidence to show, albeit not perhaps as cogently as the Secretary of State would wish, that the Claimant has been here for over twenty years and there was no challenge effectively to evidence given by the witnesses relating to that calculation: This may have been because the issue was not directly the subject of the appeal albeit relevant to Article 8 considerations. Nevertheless, ultimately the basis on which the case was put was that there were exceptional circumstances to justify looking at Article 8 ECHR on the basis that the Claimant had been in the United Kingdom for over 20 years, with or without fault makes no difference in principle to the point. In calculating the twenty years it would of course make no difference whether his presence was lawful or unlawful and to that extent, were I to have determined the matter under the Immigration Rules, the likelihood is that the Claimant had established that he was in and remained in the United Kingdom, certainly by the late 1980s.
12. It therefore seems to me that that period of time the Claimant has been in the United Kingdom, which is beyond the issue of private life rights,

constitutes an exceptional and compelling reason to consider Article 8 ECHR outside of the Immigration Rules.

13. I do not seek to go behind the Judge's adverse decision on the twenty year period under the Immigration Rules. I do take into account the evidence now provided to me of the period of time the Claimant has claimed to be in the United Kingdom and the extent to which third parties, admittedly not completely disinterested, have supported that claim. The Claimant has lived with Eileen Buckman for many a year and he plainly forms part of her private life as much as she does of his. In addition, the Claimant has been here for many years, on the view I have taken something like 30 years. There is no suggestion he might have left the UK and returned, however unlikely, during that period but nevertheless the fact is he has sought to adduce evidence to discharge the burden of establishing upon a balance of probabilities that he has been in the UK for not less than 30 years.
14. I consider that the Claimant has by reason of longevity exercised private life rights in the UK. It is extremely difficult to tell how he has embedded into society in the UK because there is so little evidence of it. He is not a churchgoer or participant in community activities and there is no general evidence to indicate what his private life really consists of. When asked by Mr Whitwell, the Claimant was really unable to articulate it, save to rely on his presence in the United Kingdom for a substantial period of time, his private life and that he has grown up in the UK. He said he has many friends in the UK, he has undergone some college education in IT studies back in 2000 and has been living privately and 'lawfully' in the United Kingdom with his cousin, Eileen Buckman. These matters were really the full extent of the evidence, other than the fact that he likes it in the United Kingdom, has no connections with Ghana or Liberia and no one to provide him with any support or family network on a return to Ghana or Liberia.
15. I accept Mr Ash's evidence of knowing the Claimant, since about the time they met in 1992. I have nothing to suggest the Claimant departed the

United Kingdom. I accept the Claimant and Miss Buckman's evidence as reasonably reliable.

16. The issue is raised with the periods of time the Claimant has been seeking to rectify his status in the United Kingdom which are said to be delays for which he was not responsible. It seems to me that the only material delay out of the whole period that I have considered is during the consideration of his application for leave to remain, which got treated as part of the legacy cases, between 2008 and 2015. The fact was that there were many tens of thousands of cases that came to be dealt with under the legacy provisions. In the circumstances the Claimant has to this extent benefited from the lengthy period in the United Kingdom to resolve his claim, albeit he has been unable to work for many years as a result of restrictions upon doing so.
17. I bear in mind that the Claimant has not been to Ghana as an adult and he left there for Liberia as a child aged 9 or so. It does not seem likely to me he will have any contacts whatsoever in Ghana likely to play any part in support of a return there. I accept the Claimant's evidence that he has no meaningful familial connections with Ghana to whom he can return. I also accept that those who have given him intermittent financial help, particularly Miss Buckman, by way of effectively pocket money and Mr Ash for odd jobs done by the Claimant or Miss Grainne Forson for babysitting or support, are unlikely to translate into sufficient funds in future to enable him to accommodate and maintain himself on a return to Ghana. The circumstances are such that, at the age he is, with no real recent history of working, he is going to find it difficult to obtain reasonably paid employment in Ghana even by that country's standards: The reality is that he has nothing to return to.
18. In the circumstances, I bear in mind his 'suitability' is not in issue, he has the ability to work, the English Language skills to find employment and reasonable physical health. I can not find any reason why he should be a burden on the UK taxpayers. I do not give weight to the exercise of private life whilst his status has been precarious and or unlawful. I find the public

interest in maintaining immigration controls is an important issue to which I give substantial weight. I find, weighing all these matters up, perhaps also the length of the time the Claimant has, as a fact, been in the United Kingdom albeit without status, shows that in this case the Secretary of State's decision was disproportionate.

19. I have applied Section 117A-B of the NIAA 2002 in reaching the view I have above on proportionality. As above in so doing I have fully considered the issues of the Claimant's unlawful presence in the United Kingdom, his English language abilities, his skills, his ability to work and support himself which he could do in the past. I have nothing to indicate that he is not in good health and would not be in a position to support himself again.

DECISION

The Original Tribunal's decision does not stand. The following decision is substituted: the Claimant's appeal is allowed on Article 8 ECHR grounds.

ANONYMITY ORDER

No anonymity direction was sought.

FEE AWARD

As I have allowed the appeal on the basis of information not before the Respondent a fee award is not appropriate.

Signed

Date 10 June 2017

Deputy Upper Tribunal Judge Davey