



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

Appeal Number: HU/13218/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5 February 2018**

**Decision & Reasons Promulgated  
On 13 February 2018**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**TARIK SEMAOUNE  
(NO ANONYMITY DIRECTION)**

Respondent

**Representation:**

For the Appellant: Mr Tufan, Senior Home Office Presenting Officer

For the Respondent: Mr Lam, instructed by David Tang & Co, Solicitors

**DECISION AND REASONS**

1. I shall refer to the appellant as the respondent and the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant, Tarik Semaoune, was born on 22 February 1972. He claims to have entered the United Kingdom in November 1995. He lived in the United Kingdom illegally using a false identity. The appellant made a human rights application to the respondent which was refused by a decision dated 17 May 2016. The appellant appealed to the First-tier Tribunal (Judge Plumtre) which, in a decision promulgated on 12 October 2017, allowed the appeal on human rights grounds (Article 8 ECHR). The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. Permission to appeal was refused by Judge Landes in the First-tier Tribunal. She noted the challenge to Judge Plumptre's analysis at [35]:

"In summary I find as submitted by Mr Lam that although the appellant does not meet the requirements of paragraph 276ADE(1)(i) that he does meet paragraph 276ADE(1)(iii) and find that he has lived continuously in the UK for at least twenty years."

3. Refusing permission to the Secretary of State, Judge Landes had addressed the apparent confusion[2]:

"It is right the judge has recorded a concession that the appellant does not meet the requirements of paragraph 276ADE(1)(i). If there had indeed been such a concession then it would be arguable that for the reasons given in the grounds that there would have been an arguable error of law. However I consider that the reference to 276ADE(1)(i) is a typing error for 276B(i)."

4. It is clear from the renewed grounds that the Secretary of State accepts this "clarification" provided by Judge Landes. Judge Plumptre's typographical error at [35] was not revisited during the hearing before the Upper Tribunal.

5. The renewed grounds focus on the question of suitability. The appellant's application had been refused under 276ADE(1)(i) in addition to 276B(i)(ii) and (v). Paragraph 276ADE(1) provides as follows:

276ADE (1). 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:

(i) does not fall for refusal under any of the grounds in Section S-LTR 1.2 to S-LTR 2.3. and S-LTR.3.1. to S-LTR.4.5. in Appendix FM;

6. Paragraph 276B provides as follows:

276B. The requirements to be met by an applicant for indefinite leave to remain on the ground of long residence in the United Kingdom are that:

(i) (a) he has had at least 10 years continuous lawful residence in the United Kingdom.

(ii) having regard to the public interest there are no reasons why it would be undesirable for him to be given indefinite leave to remain on the ground of long residence, taking into account his:

(a) age; and

(b) strength of connections in the United Kingdom; and

(c) personal history, including character, conduct, associations and employment record; and

(d) domestic circumstances; and

(e) compassionate circumstances; and

(f) any representations received on the person's behalf; and

(iii) the applicant does not fall for refusal under the general grounds for refusal.

(iv) the applicant has demonstrated sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, in accordance with Appendix KoLL.

(v) the applicant must not be in the UK in breach of immigration laws, except that, where paragraph 39E of these Rules applies, any current period of overstaying will be disregarded. Any previous period of overstaying between periods of leave will also be disregarded where –

(a) the previous application was made before 24 November 2016 and within 28 days of the expiry of leave; or

(b) the further application was made on or after 24 November 2016 and paragraph 39E of these Rules applied.

7. The Secretary of State had refused the appellant on the basis that he could not meet the requirements of S-LTR1.6 of Appendix FM:

S-LTR1.6

The presence of the applicant in the UK is not conducive to the public good because their conduct (including convictions which do not fall within paragraphs S-LTR1.3 to 1.5) character, associations and other reasons make it undesirable to allow them to remain in the UK.

8. As the grounds point out, the appellant had used deception and false identity in order to obtain illegal work in the United Kingdom over a period of years. The grounds assert that Judge Plumtre (and, by extension, Judge Landes by refusing permission) had failed to engage with the adequacy of reasoning regarding the appellant's poor character and conduct. Further, factors such as the appellant's ability to speak English and to live without recourse to public funds were "at best ... neutral factors".
9. Under paragraph 276ADE(1) the appellant would qualify for leave to remain on the basis of his private life in the UK provided he did not fall for refusal under paragraph S-LTR1.2-2.3 and S-LTR3.1. The other provisions of paragraph 276ADE(1) have been met by the appellant. First, he has made a valid application for leave to remain on the basis of his private life in the UK and secondly he has lived continuously in the UK for at least twenty years. These facts are not disputed by the Secretary of State. Further, it is unnecessary to consider subparagraph (vi) in the light of the appellant's long residence; there need be no consideration as to whether the appellant faces obstacles to prevent his return to Algeria, significant or otherwise. Not surprisingly, the renewed grounds of appeal focused on the mandatory requirement in paragraph 276ADE(1)(i) that the appellant should not be excluded for reasons connected with poor conduct or character.
10. The submissions before the Upper Tribunal concentrated on the judge's application of *ZH (Bangladesh)* [2009] EWCA Civ 8. At [32], Judge Plumtre wrote:
- "I accept that the respondent has not challenged the appellant's true identity of Tarik Semaoune and acknowledge the reasoning in *ZH*

(*Bangladesh*) paragraphs 24 and 25 referred to in the skeleton argument that whilst it would not normally be in the public interest to grant indefinite leave to remain to a person unless he has been economically self-sufficient for a significant period of the time he has spent here and that the Home Office recognise that applicants under the fourteen year Rule, as it then was, if they were to be successful must be expected to have worked unlawfully for much of their time here.”

11. In *ZH*, the Court of Appeal noted the tension between the public interest in not granting indefinite leave to remain to a person who has not been economically self-sufficient and the recognition that such applicants under the 14 year Rule (which applied at that time) must, in many cases, be expected to have worked unlawfully during their time in the United Kingdom. As a consequence, the fact that an applicant has worked unlawfully does not necessarily indicate that he or she is a person of bad character.
12. Mr Tufan sought to distinguish facts of the present appeal from the ratio in *ZH* on the basis that the rule has now changed. There is now no 14 year route to leave to remain; the route is under paragraph 276ADE (requiring 20 years’ continuous residence.)
13. I do not accept Mr Tufan’s submission. First, the twenty year requirement under HC 395 makes no distinction (as the previous Rules had done) between lawful and unlawful residence. Continuous residence of twenty years may, on the face of the Rules, be unlawful or lawful. What the Court of Appeal had to say in *ZH*, therefore, may, in my opinion, be equally applicable to the new provisions. It follows that what Judge Plumptre said at [32] is an accurate statement of the law.
14. There remains the additional circumstance that the appellant, in order to work unlawfully and maintain himself, has adopted a false identity. I find that there is some difficulty in distinguishing the use of a false identity from working illegally. It follows that, in order to work illegally, one would have to use deception; if the appellant had given his true identity and immigration status to his employers, he would have been unlikely to have found any work. I acknowledge that Judge Plumptre has not addressed the appellant’s use of deception separately from her consideration of his illegal working but I do not find that her failure to do so amounts to an error of law sufficient to vitiate her decision. In any event, the assessment of the appellant’s character is a matter which lay within the discretion of the judge and there was no evidence to show that, beyond using deception to work illegally, the appellant’s conduct had been in any way egregious. It was, therefore, not perverse of Judge Plumptre to find in the appellant’s favour.
15. The remaining grounds have no merit. Mr Lam submitted paragraph 276ADE(1)(vi) is of no relevance given that the appellant is able to meet subparagraphs (i)–(iii). I agree. Finally, the question of Section 117B of the 2002 Act (as amended) returns the argument to the appellant’s character.

Obviously, the appellant's private life in the United Kingdom has been precarious. I also accept that his ability to maintain himself is, as the grounds say, a "neutral factor". However, the fact remains that it was open to the judge on the evidence to find that the appellant met the requirements of paragraph 276ADE. The judge was, in particular, not bound to share the respondent's objections to the appellant's character and conduct.

16. In the circumstances, the Secretary of State's appeal is dismissed.

**Notice of Decision**

17. This appeal is dismissed.

18. No anonymity direction is made.

Signed

Date 8 February 2018

Upper Tribunal Judge Lane