



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

Appeal Number: HU/26197/2016

THE IMMIGRATION ACTS

Heard at Field House

On 5 February 2019

**Decision & Reasons
Promulgated**

On 04 March 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR HAMID RABAI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer

For the Respondent: Mr F Farhat, Solicitor instructed by Gulbenkian Andonian Solicitors

DECISION AND REASONS

1. The Appellant is referred to as “the SSHD”. The Respondent as “the Claimant”.

2. The Claimant a national of Algeria date of birth 11 September 1968 appealed against the SSHD's decision, dated 9 November 2016, to refuse an application for indefinite leave to remain and on human rights grounds. The appeal came before First-tier Tribunal Judge Sweet who, on 15 November 2018, allowed the appeal on Article 8 ECHR grounds.
3. Permission to the SSHD was given on 12 December 2018. The Claimant made an extensive Rule 24 response on 25 January 2019. The grounds essentially raised two points albeit expressed as three, the first being the issue of whether or not the Claimant had resided in the United Kingdom for twenty years at least at the date of the hearing and whether there was in fact a dispute about that matter at all bearing in mind it was thought that a Section 120 notice had effectively been given at the hearing and the SSHD had consented to the matter being considered. It is quite clear the point was something of a red herring because as a fact under paragraph 276ADE(1) of the Immigration Rules (the Rules) it was common ground that it was not until after that, the Claimant had resided in the United Kingdom for over twenty years.
4. What was in reality the issue was raised in the second and third grounds namely that the First-tier Tribunal Judge had failed to give adequate or sufficient reasons why the Article 8 ECHR claim was engaged. Whether or not in the light of the case law the Judge had correctly addressed the consideration of the Article 8 issues including the public interest question bearing in mind that part of the Claimant's conduct in the United Kingdom had been that he admitted, he had obtained false identification purely with a view to being able to work in the UK. He could not have done so with his Algerian identity document of the passport.
5. The Judge made a number of adverse criticisms of the reliability of the Claimant's evidence which undoubtedly were of some materiality and some weight in the assessment of proportionality and the public interest question as well. Regrettably the Judge's analysis of the Article 8 ECHR

claim was not sufficient in terms either setting out the material considerations that the Judge had regard to; let alone the material facts.

6. In these circumstances, I find that the Original Tribunal's reasoning falls far short of that which it is necessary and was not addressed. I do not speculate why the error occurred. It is enough to say the Original Tribunal's decision cannot stand. The matter will have to be remade again specifically addressing the Article 8 ECHR issues.

NOTICE OF DECISION

The appeal is allowed to the extent to which the matter is to be remade in the First-tier Tribunal.

No anonymity direction is made nor is one required.

DIRECTIONS

List for hearing at Hatton Cross.

Not before First-tier Tribunal Judge Sweet.

Time estimate two hours.

No interpreter required.

Four witnesses.

Any further evidence to be served not later than 10 clear working days before the substantive hearing unless otherwise directed at a CMRH or by a judge of the First-tier Tribunal

Signed

Date 25 February 2019

Deputy Upper Tribunal Judge Davey