Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/16681/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House by video conference on 12 May 2021	**Decision & Reasons Promulgated on 27 May 2021**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

ALI CIL

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: No appearance
For the respondent: Ms A. Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 07 May 2019 to refuse a human rights claim.

2. First-tier Tribunal Judge R. Sullivan dismissed the appeal in a decision promulgated on 04 February 2020. Her reasons were summarised at [2-4] of the Upper Tribunal's error of law decision promulgated on 03 March 2021 (annexed). The First-tier Tribunal's findings relating to the immigration rules were preserved. The only issue identified for remaking was the potential impact on the balancing exercise under Article 8 of the respondent's delay between 2002-2006 in deciding the appellant's

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marriage application, and whether it might have prejudiced his chance to apply for settlement before his marriage broke down, as he claimed, in 2006.

3. The appellant did not attend the error of law hearing. Mr Ward, of James and Co. Solicitors, argued that the case should be listed for a resumed hearing to allow the appellant to attend to give evidence and to produce further evidence relating to this issue. The case was adjourned and a resumed hearing listed.

4. The respondent filed and served further evidence by email on 07 May 2021. The evidence included a copy of a letter dated 11 May 2006 asking the appellant to provide updated evidence to show that the marriage was subsisting before a decision was made in relation to the marriage application. The respondent also filed copies of her GCID notes covering the period from 10 May 2006 to 13 February 2007. On 12 July 2006 the notes record that the appellant sent letters and utility bills to show that he was still co-habiting with his wife. Based on this evidence he was granted 12 months leave to remain until 18 July 2007.

5. On 20 December 2006 the notes record:

> "Third party fax dated 12-10-2006 received from Mrs N Guler that she is no longer with Mr Ali Cil and have been separated for the past 3 years and been in the court since March 2006. Now divorced and he trying for a British passport by false information to his lawyer."

6. On 05 February 2007 the notes record:

> "Pls see previouse (sic) cid notes. It appears that applicant acquired LTR by deception. As applicant leave is less than six months therefore unable to curtail leave, but informed WICU. Please do not grant FLTR with out off file. (sic)"

7. On 13 February 2007 the notes record:

> "Please see previouse (sic) case notes. Applicant ex-spouse stated on her fax dated 12.10.06 that they were separated for last three years and divorced. It appears LTR gained by deception. Pls take action and removed (sic) under setion (sic) 10 of the 1999 Act, as amended for having gained leave by deception."

8. In light of this evidence the appellant's legal representative wrote to the Upper Tribunal on 12 May 2021 to say:

> "We advised that having receive (sic) the further evidence served on behalf of the Secretary of State we are instructed by the Appellant to offer not (sic) further evidence or submissions this matter.
>
> We would ask that the Tribunal re-make the decision on the basis of the evidence and submissions already filed."

Decision and reasons

9. Article 8 of the European Convention protects the right to private and family life. However, it is not an absolute right and can be interfered with by the state in certain circumstances. It is trite law that the state has a right to control immigration and that rules governing the entry and residence of people into the country are "in accordance with the law" for the purpose of Article 8. Any interference with the right to private

or family life must be for a legitimate reason and should be reasonable and proportionate.

10. Part 5A of the Nationality, Immigration and Asylum Act 2002 ('NIAA 2002') applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts breaches a person's right to respect for private and family life under Article 8 of the European Convention.

11. The appellant does not meet the 20 year long residence requirement contained in paragraph 276ADE(1)(iii) of the immigration rules nor the requirements of paragraph 276ADE(1)(vi). The First-tier Tribunal judge found that there would not be 'very significant obstacles' to his integration in northern Cyprus given that he continues to have familial connections there and is capable of working to support himself.

12. The appellant says that he has lived in the UK since 2002. No evidence has been produced as to his English language ability although there is some evidence to suggest that he has worked without permission in the UK and is capable of supporting himself. However, those factors are neutral in the balancing exercise. Little evidence has been produced to indicate the strength of any ties he might have developed in the UK. In any event, little weight can be placed on his private life when it has been developed at a time when his status was precarious or unlawful.

13. The appellant made an in time application for leave to remain on the basis of his marriage at the end of 2002. The respondent delayed in making a decision on the application until 2006, but the evidence shows that by that stage the appellant had been separated from his wife for three years and may have been divorced. Despite being asked to do so by the First-tier Tribunal judge, and indicating that he would produce evidence in this appeal, the appellant has never confirmed the date of the divorce. A reasonable inference can be drawn from his failure to produce such easily obtainable evidence i.e. that it is likely that he was divorced before he was granted leave and he wanted to avoid the fact becoming known.

14. Although the Upper Tribunal does not have a copy of the evidence submitted in response to the letter dated 11 May 2006, the appellant has offered no evidence in response the allegation that he used deception in the marriage application. I am satisfied that the GCID notes are sufficient to discharge the respondent's burden of proving that he falsely claimed to be in a subsisting marriage in 2006, when in fact the relationship had broken down three years before. In light of the evidence produced by the respondent there is nothing to show that the delay in decision making prejudiced the appellant's chances of settlement. The information received from his former wife suggests that the relationship broke down sometime in 2003, less than a year after the marriage application was made.

15. Far from creating a compelling circumstances that might outweigh the public interest in maintaining an effective system of immigration control, the fact that the appellant used deception in 2006 is a matter that lends weight to the public interest in

removing him in circumstances where he has remained in the UK without leave for many years and does not meet the requirements of the immigration rules. It is unclear why the respondent did not take action to remove him in 2007 or whether the appellant absconded to avoid detection. Nevertheless, he remained in the UK in the knowledge that he had no permission to do so once the leave obtained by deception expired on 18 July 2007. No other compelling or compassionate circumstances have been identified. For the reasons given above I conclude that removal would not amount to a disproportionate interference with the appellant's right to private life under Article 8 of the European Convention.

16. I have no doubt that the appellant's legal representative acted in good faith on the instructions that he was given. The appellant must be aware that his obfuscation on the issue of his marriage and divorce, and the pursuance of this appeal in the Upper Tribunal on this point, has wasted hearing time and public resources. It is a matter for the respondent to decide what steps she takes next, and how quickly, but if the appellant were to make any other applications for leave to remain no doubt his conduct will be taken into account.

17. I conclude that removal would not be unlawful under section 6 of the Human Rights Act 1998.

DECISION

The appeal is DISMISSED on human rights grounds

Signed M. Canavan Date 13 May 2021
Upper Tribunal Judge Canavan

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email

ANNEX

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/16681/2019

THE IMMIGRATION ACTS

Heard at Field House by video conference 11 February 2021 (V)

Decision Promulgated

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Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

ALI CIL

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr P. Ward of James & Co. Solicitors
For the respondent: Mr D. Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 07 May 2019 to refuse a human rights claim.

2. First-tier Tribunal Judge R. Sullivan ('the judge') dismissed the appeal in a decision promulgated on 04 February 2020. The judge listed a number of facts that she

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accepted [14]. She acknowledged that the appellant entered the UK on 03 July 2002 with a visa that was valid until 28 December 2002 (the decision states 2012 but this must be a typographical error). The appellant married in the United Kingdom on 11 December 2002 when he was only 18 years old. He made an in-time application for leave to remain on the basis of his marriage. The respondent accepted that there was a delay in deciding the application. The appellant was granted leave to remain on 18 July 2006 until 18 July 2007. First, the judge noted that the delay most likely led to a more entrenched private life in the United Kingdom. Second, it also delayed the start of the two-year probationary period before he could apply for Indefinite Leave to Remain. Third, the delay denied the appellant of his passport so that he could not travel to maintain ties with family and friends in Northern Cyprus [14(d)]. The judge acknowledged that there was some force in the submission that if the 2002 application had been considered within a reasonable period of time it was likely that the appellant would have completed the two-year probationary period as a spouse and would have been eligible to apply for settlement. She made no findings as to how much weight she placed on this issue given that she acknowledged that the point 'had some force'. The judge only noted that the appellant had not filed a copy of the decree absolute with the evidence [14(d)].

3. The judge noted that the appellant's parents still lived in Cyprus and observed that there was little evidence to show the strength of any private life ties with friends or relatives in the United Kingdom. She recorded the appellant's earnings and noted that there was no evidence to indicate that he had claimed public funds. She was satisfied that he spoke English. Whilst she accepted that he worked as a chef she was not satisfied that the evidence of his earnings was sufficient to show that he would be financially independent. She concluded the list of facts and findings by stating that the appellant did not come within Appendix FM of the immigration rules regarding any familial relationship he might have with siblings in the United Kingdom [14(n)].

4. The judge found that the appellant did not meet the requirements of paragraph 276ADE(1)(iii) for leave to remain on grounds of long residence because he had lived in the United Kingdom for less than 20 years at the date of the application [15]. She concluded that there were no 'very significant obstacles' to him integrating in Northern Cyprus for the purpose of paragraph 276ADE(1)(vi). The judge took into account the factors put forward on behalf of the appellant but also noted that he spoke Turkish, was educated in Northern Cyprus, and continued to have close family connections there. There was no evidence to suggest that they would not be willing to support him if he returned. He had relevant experience that would assist him to find work in Cyprus [17]. The judge went on to weigh factors relating to the public interest in maintaining an effective system of immigration control against the appellant's personal circumstances but did not mention what weight she might have placed on the issue relating to the potential loss of a route to settlement arising from the Secretary of State's delay in considering his application for leave to remain as a spouse [19-20]. The judge concluded that there was no evidence to show the decision would lead to unjustifiably harsh consequences for the appellant. She concluded that his removal would be proportionate [21].

5. The appellant appealed the First-tier Tribunal decision on the following grounds:

   (i) The judge misdirected herself on the appellant's length of residence at the date of the application, which was in fact 16 years and 27 days and not 14 years and 27 days as stated at [15].

   (ii) The judge erred in failing to identify what weight to place on the respondent's delay in deciding the application for leave to remain as a spouse having acknowledged that there was 'some force' in the submission that it may have led to him missing the opportunity for settlement.

6. First-tier Tribunal Judge Saffer granted permission to appeal on the second ground only. Quite rightly, he pointed out that the first would have made no material difference to the outcome given that 20 years residence is required at the date of the application to satisfy the requirements of paragraph 276ADE(1)(iii) of the immigration rules.

Decision and reasons

7. Having considered the grounds of appeal and the oral submissions made by both parties I conclude that the First-tier Tribunal decision involved the making of an error of law in relation to the narrow issue identified.

8. Many of the judge's findings were open to her to make on the evidence. However, she failed to make findings relating to a material matter and failed to give adequate reasons to explain how much weight she placed on other issues. Having noted at [8] that there was 'some force' in the submission that the delay in decision making between 2002-2006 may have led to a lost opportunity for settlement, the judge failed to explain what weight she placed on the issue when she came to the proportionality assessment at [19-20].

9. At [12] the judge noted that the appellant was given an opportunity to file a copy of the decree absolute to confirm the date of divorce. At [14(e)] she observed that the appellant failed to do so but failed to make any findings as to what impact that failure might have on the issue. The appellant's evidence was that his marriage broke down in 2006 but the judge made no findings as to whether she accepted his evidence having had the opportunity to assess the appellant's credibility at the hearing.

10. At the hearing before the Upper Tribunal I noted that the application form contained in the respondent's bundle appeared to indicate that a copy of the decree absolute was sent with the application for leave to remain. Mr Ward accepted that the cover letter from James & Co. Solicitors dated 07 August 2018 did not make reference to the decree absolute in the list of enclosures and confirmed that the document was not in fact sent to the respondent. The appellant had instructed him that he made efforts to obtain a copy of the decree absolute after the First-tier Tribunal hearing, but he had been unable to provide a copy of the document.

11. The judge made a bare statement that the appellant had failed to file a copy of the decree absolute but failed to explain how or why this might affect her assessment of the issue. Even if the judge did not have evidence to confirm the exact date of the divorce it was reasonable to infer that the respondent was likely to have been satisfied that the appellant was in a genuine and subsisting marriage when leave to remain was belatedly granted in July 2006. The judge failed to consider the import of this information.

12. Mr Clarke argued that it was for the appellant to prove that he was still in a genuine marriage at the date he was granted leave to remain. On closer inspect of some of the CID notes that were available to him, but not in evidence, he accepted that the respondent's records indicated that there was a request for updated evidence before leave was granted. However, he pointed out that there was some scope for disingenuous information to be provided to the respondent at that time if the appellant admits that the marriage broke down shortly after. The suggestion being that it might have broken down well before the appellant says.

13. For the reasons given above I conclude that the decision involved the making of errors of law. The decision is set aside and will need to be remade at a resumed hearing. The judge's findings relating to the immigration rules are preserved. Remaking will be confined to an overall assessment of where a fair balance should be struck in relation to Article 8. The circumstances surrounding the breakdown of the appellant's relationship with a British citizen will need to be explored in more detail and findings made on the import of the delay in decision making.

DIRECTIONS

14. **The parties** are granted permission to produce up to date evidence, which must be filed and served at least 14 days before the next hearing.

15. **The parties** agreed that the decision could be remade fairly by way of a remote video hearing. The appellant speaks English and would be able to give evidence without any significant impairment by that mode of hearing.

16. **The parties** are at liberty to apply to amend these directions should they have significant practical difficulties in complying.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The decision is set aside and will be remade at a resumed hearing in the Upper Tribunal

Signed M. Canavan Date 02 March 2021
Upper Tribunal Judge Canavan