



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000603
First-tier Tribunal No:
HU/01403/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 23 May 2023

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

MR MOHAMED DELIMI
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Chakmakjian, counsel instructed by Kilby Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 10 May 2023

DECISION AND REASONS

Introduction

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Ficklin promulgated on 29 December 2022.
2. Permission to appeal was granted by First-tier Tribunal Judge Evans on 2 March 2023.

Anonymity

3. No anonymity direction was made previously, and there is no reason for one now.

Factual Background

4. The appellant is a national of Algeria now aged 50. He states that he entered the United Kingdom on 15 March 1997. He made several unsuccessful applications for leave to remain between 2010 and 2016. Ultimately, the appellant succeeded at appeal, following which he was granted leave to remain

from 30 November 2017 until 30 May 2020. The basis of that appeal decision was that the appellant's seriously mentally unwell brother was strongly dependent upon the appellant to maintain his psychiatric health and, as well that the appellant had been living in the United Kingdom since at least 1998.

5. On 20 April 2020, the appellant applied, in -time, for further leave to remain on the same basis upon which his appeal was allowed. That application was refused by way of a decision dated 29 January 2021 and this is the decision which is the subject of this appeal. In short, the respondent did not accept that the evidence provided by the appellant showed that he had been living in the United Kingdom continuously, for 20 years. Nor was it accepted that there were very significant obstacles to the appellant's integration in Algeria nor that there were any exceptional or compassionate circumstances, notwithstanding that the appellant stated that he cared full-time for his brother who had serious mental health issues and had previously won his appeal on this basis.

The decision of the First-tier Tribunal

6. Following the hearing before the First-tier Tribunal, it was found that the circumstances had materially changed since the appellant's previous appeal was allowed and it was not accepted that the appellant provided the same level of support to his brother. In addition, the judge did not accept that the appellant was in the United Kingdom for twenty years prior to the date of the most recent application.

The grounds of appeal

7. The first argument made was that the judge erred in failing to assess the appellant's ability to meet the requirements of the Rules at the date of the hearing in relation to his residence in the United Kingdom. Secondly, it was argued that the judge failed to consider a significant quantity of material evidence which was capable of affecting the proportionality assessment. It was suggested that the decision could be reviewed under Rule 34 of the First-tier Tribunal procedural rules and the appeal should be allowed under Article 8.
8. Permission to appeal was granted on the basis sought, with the judge granting permission remarking that the judge ought to have considered the Article 8 issue as of the date of the hearing.
9. The respondent filed no Rule 24 response.

The hearing

10. At the outset of the hearing, Ms Everett stated that it was clear that at the date of the hearing the appellant would have succeeded if he had made an application based on twenty years continuous residence in the United Kingdom. Mr Chakmakjian referred to his Note on Evidence dated 15 November 2022 which was before the First-tier Tribunal. He added that while the second ground took issue with the judge's findings regarding his relationship with the brother, he would focus on the first ground. Even if all the judge's findings were left undisturbed, the appellant should succeed.
11. Mr Chakmakjian argued that although judge found that the appellant had been residing in the United Kingdom since 2001, he mistakenly looked at the date of the human rights application and failed to assess the position as of the date of

hearing. He invited me to find a material error of law and to remake the decision based on the judge's findings of fact.

Decision on error of law

12. At the time of the hearing before the First-tier Tribunal in December 2022, the appellant claimed that he had been residing in the United Kingdom for at least 24 years, having arrived at some stage in 1997. The previous judge had accepted the evidence of a witness who stated that he had known the appellant since 1998. Mr Chakmakjian stated, out of fairness, that the issue before the previous tribunal was not the length of the appellant's residence in the United Kingdom but his family life with his brother. In any event, First-tier Tribunal Judge Ficklin took the starting point from the comment made by the previous judge that the appellant 'accepts that he can produce no evidence to corroborate his presence prior to the year 2000.' The judge found at [21] that the appellant was using a specific false identity as far back as 2001 and that there was no evidence that he was in the United Kingdom any earlier. As the appellant had applied for further leave to remain in April 2020, the judge calculated that the appellant had been residing in the United Kingdom for less than 20 years and therefore did not meet the requirements of the Immigration Rules.
13. The representatives rightly agreed, given the content of section 85(4) of the Nationality, Immigration and Asylum Act 2020, that the judge ought to have calculated the length of the appellant's residence as at the date of the hearing. Based on the judge's findings, the appellant had been continually residing in the United Kingdom for close to twenty-two years by the time of his appeal. No suitability issues have been raised on behalf of the respondent and therefore were the appellant to have applied for indefinite leave to remain at the date of the hearing, he would have succeeded in satisfying the requirements of the paragraph 276ADE (iii) of the Immigration Rules. The appellant's ability to meet rules is effectively dispositive of this appeal because the appellant's ability to do so means that the respondent cannot point to the importance of maintaining immigration control as a factor weighing in her favour in the proportionality balancing exercise, applying [OA and Others \(human rights; 'new matter'; s.120\) Nigeria \[2019\] UKUT 65 \(IAC\)](#). The judge, in seeking to restrict his consideration of the appellant's residence to the date of the human rights application materially erred and without this error the outcome of the appeal could not have been the same. For this reason, the decision of the judge regarding the long residence issue is set aside.
14. Mr Chakmakjian continued to rely upon the second ground of appeal. While there is no utility in exploring this in any detail, it suffices to say that there was merit in the grounds regarding the failure by the judge to consider the expert medical evidence which was before the previous tribunal which fully explained the diagnosis, nature and treatment required by the appellant's brother.

Decision on remaking

15. As indicated above and based on the findings of the First-tier Tribunal, the appellant has established that he has been residing in the United Kingdom since 2001, a period of twenty-two years and five months at the date of the hearing before the Upper Tribunal. He meets the requirements of the Immigration Rules relating to long residence, no countervailing public interest matters have been

raised and the maintenance of immigration control is not a matter to which any weight can be attached, applying *OA and Others*.

16. The appeal is allowed on human rights grounds.

Conclusions

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

I set aside the decision to be re-made.

I substitute a decision allowing the appeal on human rights (Article 8) grounds.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

11 May 2023

TO THE RESPONDENT **FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

11 May 2023

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