



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003022

First-tier Tribunal No: EA/08553/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 29th February 2024

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

IHAB MEKLA
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Joshi, of Counsel, instructed by Joshi Advocates Ltd
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

Heard at Field House on 23 January 2024

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Algeria born on 24th August 1992. He applied on 14th April 2022 under Appendix EU of the Immigration Rules for limited leave to remain as the spouse of Ms Miriam De Nichilo, a citizen of Italy. His application was refused on 25th August 2022. His appeal against the decision was allowed by First-tier Tribunal Judge Mulready in a determination promulgated on the 23rd June 2023.
2. Permission to appeal was granted and an Upper Tribunal Panel found for the reasons set out in our decision at Annex A to this decision that the First-tier Tribunal had materially erred in law.

3. The matter comes back before me pursuant to a transfer order to remake the appeal. At the beginning of the hearing there was a discussion and an adjournment to sort out the fact that the respondent's DVR evidence was not before me and that only three of the British Gas bills had reached Mr Lindsay, and likewise only three were in my bundle of papers. I accepted that six British Gas bills had been before the First-tier Tribunal at the time of that decision, and Ms Joshi was able to email us the missing three. I accepted that the three that were not in the Upper Tribunal papers were not however available for the respondent to have checked prior to the hearing before the First-tier Tribunal. Mr Lindsay clarified that the position of the respondent was that these additional three gas bills were not genuine for the same reasons as the first ones had been found not to be genuine.

Evidence & Submissions – Remaking

4. The evidence of the appellant and his spouse from their statements is that they are in a genuine relationship. They say that they met at a night club in March 2019 in London Bridge, and a relationship started in October 2019. Their evidence is that they started to live together in November 2019 in Bow Common Lane, and that they married in Algeria on 28th December 2019. They say that they have provided genuine bills from British gas to document their cohabitation. They say the appellant is entitled to a leave to remain as a spouse on the basis of their marriage and period of residence.
5. The appellant gave his evidence through an Arabic interpreter. He confirmed his identity and that his statement was true and correct. In oral evidence he reiterated that the gas bills were genuine and he had lived in the UK since before December 2020. He said that his wife paid the gas bills. The appellant said that he had first come to the UK in 2017 but had not included this in his statement as the emphasis had been on his residence in 2020. He said he did not have bank statements before 2021 because he was not employed or earning prior to this time so did not have a bank account. He accepted that the gas bills were the only evidence of his residence in 2020. He could not explain why British Gas would say that the bills were false if they were in fact genuine. The appellant said that the account had originally be in his wife's name only. The appellant denied inventing the bills. He could not explain why the customer reference number was different in the green box on the right hand side of the bill and at the bottom under "Ways to pay you bill". He said that after the problem had been identified at the First-tier Tribunal he and his wife had contacted the landlord of their property. The appellant could not explain why the friends who say that they know him and his wife had not said that they met him in the UK. He said that the friends had children and other commitments and so had not been able to attend the Upper Tribunal.
6. The appellant's wife, Ms Miriam De Nichilo, attended the Upper Tribunal and gave her evidence through an Italian interpreter. She reiterated her

view that despite the British gas evidence and the inconsistent customer reference numbers the bills were genuine. She could not explain why British gas thought the bills were false. Ms De Nichilo said that she had regularly paid the bills with a card. She also said that since this issue had arisen they had contacted the landlord and now had a card payment meter. She could not explain how British Gas would deal with her landlord if the bills were in fact in her name. She had no evidence of contacting her landlord as she had done this in person not by letter. She accepted that her bank statements did not have a stamp from the bank verifying them as genuine and that they were just printed off from the internet. She reiterated that she had met the appellant in 2019 and that he was therefore present in the UK with her prior to December 2020. She did not agree that he had been living in Algeria at that time. Ms De Nichilo said that the gas bills had not been printed off by her, and had been sent to their lawyer by the appellant.

7. It is argued in the refusal decision and in oral submission by Mr Lindsay for the respondent in short summary as follows. The central issue was whether the appellant had been resident in the UK prior to December 2020. There was very little documentary evidence going to this issue, simply the six gas bills. The gas bills addressed to the appellant and his wife of 15th December 2020, 4th September 2021 and 2nd November 2021 are false as evidenced by the DVR email from Centrica because the customer reference numbers are not the same in the two places on the bills, and because British Gas have no record of the persons on the bill or of the customer reference numbers. The additional three bills are also false for the same reasons. It follows that the appellant and his wife have knowingly submitted false documents, and this damages their credibility so their own testimony cannot be given weight. It is argued that this finding means that the other documentary evidence must be looked at in the round in the context of this false evidence applying Tanver Ahmed. The appellant's bank statements are not stamped by the bank and in any case only commence in 2021. The only other evidence relating to the appellant is the letters from the 5 friends. None of these people have attended the Upper Tribunal, and none of the authors actually place the appellant in the UK prior to 31st December 2020. It is argued therefore that this evidence is of little weight. It is argued that the appellant's wife's bank statements are not stamped as true copies by the bank and are just print outs created by the appellant's wife, and so the payments to British Gas are not properly evidence by these documents. It is argued that evidence that could have reasonably been obtained (such as GP records, photographs, other utility bills, council tax bills) in support of the appeal was not obtained. It is argued that on the totality of the evidence the appellant's appeal therefore fails as he can neither show a genuine period of residence nor that he is suitable as he has submitted false evidence.
8. It is argued for the appellant by Ms Joshi that the appeal should be allowed for the following reasons. She argues that weight can be placed on the six gas bills as the appellant's wife's bank statements show that

she was paying the amounts on the bills. She argues that the respondent has not said that the appellant and his wife are not genuinely and lawfully married, and the letters from friends are further evidence of this fact. She argues that it is probable that the appellant met and has known his friends in the UK as they are British citizens, and not all of Algerian origin. She argues that I should accept the credible testimony of the appellant and his wife and find that they have lived together in the UK as husband and wife since 2019 and so satisfy the residence requirement of the Rules. She argues that were I to find that the gas bills are forgeries then I should exercise discretion to find the appellant suitable as he is genuinely married and clearly did not submit the gas bills knowing that they were not genuine, and further they were submitted in a context where his wife clearly was paying the amount shown on them to British gas. She argued that the appellant would be in a position to return to Algeria and apply for entry clearance under EU14A as a joining family member of an EU national and so this would also be a reason to exercise discretion in his favour.

Conclusions- Remaking

9. The appellant's application was refused under EU16(a) of Appendix EU (suitability: because of the submission of false documents, namely three gas bills) as it was considered proportionate to refuse given the submission of false evidence; as well as under EU14 of Appendix EU on the basis of a failure to show the necessary continuous period of residence prior to 31st December 2020. The application is refused under EU6 of Appendix EU as well, but this is simply an overarching provision which states that applications which do not meet the requirements will be refused.
10. I am satisfied that the respondent has shown on the balance of probabilities that the appellant has submitted false documents with his application, namely the six British gas bills. The evidence in support of this is an email from Centrica/British Gas which confirms that the bills in the joint names of the appellant and his wife of 15th December 2020, 4th September 2021 and 2nd November 2021 are not legitimate documents, and have not been issued by them. They also stated that: "We do not have a record of the names persons or the customer account number ending 6575". They also note that the customer account number appears twice on the bill (in the green section and in the ways to pay section) and should be the same whereas it is different on these fake bills. The further three bills submitted by the appellant dated 20th December 2019, 6th March 2020 and 27th July 2020 have the same faults in that they are equally addressed to the appellant and his wife whom British Gas say they have no record of, and equally have the not recognised customer account number ending with 6575 in the green section of the bill, and have different customer account numbers in this section and under ways to pay. I do not find that the appellant's wife's HSBC bank statements of December 2020, September 2021 and November 2021 which apparently show that payments were made to

British Gas corresponding to the bills, assists the appellant in refuting this evidence. As Mr Lindsay has pointed out the statements are not certified copies from the bank, and so are not shown to be genuine documents. The appellant has shown a willingness to provide false documents, and further even if these payments were genuinely made by his wife it does not mean that the bill was necessarily in their joint names, as the payments could have been in relation to bills on an account that is in reality in someone else's name; and in addition they do not prove that the appellant was present in the UK at that time when his wife paid the bills.

11. I find that the finding that the appellant has sort to rely upon false documents is a reason to give the testimony (both in the statements and orally) of the appellant and his wife little weight, particularly as neither of them could go any way to explain why they continued to believe the documents were genuine, and because what they said that they did after this was brought to their attention at the First-tier Tribunal does not make sense. If the gas bill was truly in their joint names it would not have been a matter for their landlord to sort out, they would have had to do this themselves, and clearly landlords cannot change gas meters as only British gas engineers can do this.
12. As Mr Lindsay has submitted the other documentation going to the appellant's residence is of little weight. The bank statements of the appellant do not place him in the UK prior to 31st December 2020 as they are all dated 2022. The five letters in support do not state that any of the friends met the appellant in the UK but simply that they have been friends with him since prior to December 2020, leaving open the possibility that the friendship was formed in Algeria or elsewhere in the world. Further none of the friends attended the Upper Tribunal (or indeed the First-tier Tribunal) so that their evidence could be tested. As Mr Lindsay has submitted the appellant has also not submitted any other evidence that might reasonably be thought to be available to him to prove his period of residence such as GP notes, other utility bills such an electricity and water and mobile phone, council tax bills and/or dated photographs of the appellant and his wife in the UK.
13. On consideration of all of the evidence in the round I am not satisfied that the appellant has shown on the balance of probabilities that he has been residing in the UK since prior to 31st December 2020. As a result I conclude that the appellant's appeal fails because he has not shown he has been resident for the necessary period of time in the UK, and also because he is not suitable due to the submission of false documents. I do not exercise discretion to find that although false document are submitted that the appeal should not fails under suitability. I find that the appellant must have been aware that the British gas bills were false and continued to assert that they were not with no proper evidence in support of this fact, and that this is not a case of innocent mistake or with other mitigating circumstances, or even one with evidence of a

strong family life relationship between the appellant and his wife, where it would be appropriate to exercise discretion in his favour.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. The Panel set aside the decision of the First-tier Tribunal.
3. I remake the appeal by dismissing it under Appendix EU of the Immigration Rules.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24th January 2024

Annex A Error of Law Decision:

DECISION AND REASONS

Introduction

1. The claimant is a citizen of Algeria born on 24th August 1992. He applied on 14th April 2022 under Appendix EU of the Immigration Rules for limited leave to remain as the spouse of Ms Miriam De Nichilo, a citizen of Italy. His application was refused on 25th August 2022. His appeal against the decision was allowed by First-tier Tribunal Judge Mulready in a determination promulgated on the 23rd June 2023.
2. Permission to appeal was granted by Upper Tribunal Judge Jackson on 14th September 2023 to the Secretary of State on the basis that it was arguable that the First-tier judge had erred in law in failing to make clear findings as to whether the gas bills were false or genuine in circumstances where it is arguable that if they were false the appeal could not have been allowed.
3. The matter came before us to determine whether the First-tier Tribunal had erred in law, and if so to determine if any such error was material and whether the decision in the appeal should be set aside.

Submissions – Error of Law

4. In the grounds of appeal and submissions from Mr Terrell it is argued for the Secretary of State, in short summary, as follows.
5. It is argued firstly that there has been a material misdirection of law because at paragraph 25 of the decision it is found that the Centrica fraud investigator's email does cause the claimant difficulties but these were not fatal. There is a failure thereby to determine on the evidence whether the three gas bills had been shown to be false, and a failure to address the fact that an application fails if false documents are submitted, as per EU16(a) of Appendix EU of the Immigration Rules. This provision was part of the reasons for refusal as set out in the Secretary of State's letter of refusal. Further the attendance note of counsel before the First-tier Tribunal does not record any concession with respect to this basis of refusal, or indeed any other concession, despite counsel being specifically directed to record if there was a concession; and no concession is recorded in the decision of the First-tier Tribunal.
6. Secondly, it is argued, the First-tier Tribunal Judge has failed in a vital part of the decision-making as there could have been no lawful assessment of the credibility of the claimant without making a decision on the veracity of the disputed gas bills and without looking at all of the evidence in the round when considering if the period of residence has

been made out. It was argued by Mr Terrell that the decision that the continuous period of residence as required under EU14 was shown failed to comply with the approach required by Tanveer Ahmed (documents unreliable and forged) [2002] UKIAT 439.

7. In the Rule 24 response and submissions from Ms Joshi it is argued for the claimant, in short summary, as follows. The decision refusing the claimant was only on the basis of EU6 of Appendix EU, that the claimant had not shown the required period of residence. The sole issue to determine, as per paragraph 10 of the decision of the First-tier Tribunal was whether the claimant had a period of continuous residence prior to 30th December 2020. The appeal was not argued by counsel for the Secretary of State on the basis that the claimant did not meet the suitability requirements. It was intimated that counsel for the Secretary of State had essentially accepted that the bank statements admitted for the claimant on the day of hearing had undermined the evidence of forgery in the DVR email from Centrica and so had not pursued this issue. Therefore, it was argued, the First-tier Tribunal was not required to consider the issue at EU16(a) of Appendix EU or make findings on this issue as it was outside the scope of the appeal.
8. It was also argued for the claimant that the First-tier Tribunal makes findings on the continuous residence issue based on the other evidence before the Tribunal and so there was no need to make findings on the contended false gas bills, although attention is drawn to problems with the evidence that they are forged. It is argued that these documents were therefore properly placed in the balance, and that the First-tier Tribunal did not err in law in reaching the conclusion that the claimant's period of continuous residence was shown.
9. We indicated to the parties that we found that the First-tier Tribunal had erred in law for both reasons argued by the Secretary of State, but would set out our reasons in writing. We could not proceed to remake the appeal as the claimant was present but not his wife, whom he wished to call as a witness, and he required an interpreter. In addition the appellant wished to adduce further evidence responding to the DVR which had been adduced on the morning of the hearing before the First-tier Tribunal which we found was reasonable and in the interests of justice to admit.

Conclusions- Error of Law

10. We find that the claimant's application was refused under EU16(a) of Appendix EU (suitability: because of the submission of false documents, namely three gas bills) as it was considered proportionate to refuse given the submission of false evidence; as well as under EU14 of Appendix EU on the basis of a failure to show the necessary continuous period of residence. The application is refused under EU6 of Appendix EU as well, but this is simply an overarching provision which states that applications which do not meet the requirements will be refused.

11. We find that there was no concession given at the hearing before the First-tier Tribunal with respect to the suitability refusal under EU16(a) as counsel for the Secretary of State specifically stated that he made no concessions at the hearing on his record provided to the Secretary of State; and on the day of the hearing he submitted the DVR email from Centrica regarding the contended false gas bills. Further no concession is recorded in the decision. There was no Secretary of State's review in this appeal. It may be that the First-tier Tribunal was not assisted by counsel for the Secretary of State in identifying the issues as set out in the reasons for refusal letter but it remained the duty of the First-tier Tribunal to address all the grounds of refusal in the refusal decision even if no submissions were made on them by the Secretary of State's representative unless they were specifically conceded. It was not sufficient to record, as is done at paragraph 10 of the decision, that the sole issue in dispute was continuous residence if the reasons for refusal letter put forward suitability/the submission of false evidence as a basis for refusal and there was no explicit concession by the Secretary of State's representative. As a result we conclude that the First-tier Tribunal erred in law in failing to determine a key issue in the appeal.
12. We also find that there needed to be a decision considering all of the evidence as to whether the three gas bills had been shown to be false documents by the Secretary of State when determining the appeal with reference to EU14, i.e. in considering whether the claimant had shown a period of continuous residence. At paragraph 25 of the decision the First-tier Tribunal finds that the document verification report "does cause the Appellant some difficulties" but that these are not fatal. This is not a finding on the issue. Whilst difficulties with the Secretary of State's evidence are identified at paragraph 21 of the decision there is no finding on the balance of probabilities as to whether these documents had been shown to be false. As Mr Terrell has argued to consider all of the evidence in the round, properly following Tanveer Ahmed, and conclude whether the claimant had shown a period of continuous residence, it was necessary for the First-tier Tribunal to consider whether the claimant had submitted false evidence, even if it was found that he had also submitted evidence that appeared genuine or was unchallenged by the Secretary State as is identified at paragraph 23 of the decision.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. We set aside the decision of the First-tier Tribunal.
3. We adjourn the remaking to a hearing before the Upper Tribunal at Field House on Tuesday 23rd January 2024.

Directions:

1. The appeal is listed for two hours with an Algerian Arabic interpreter and an Italian interpreter.
2. Any updating evidence which either party wishes to adduce relevant to the issues in the appeal must be filed with the Upper Tribunal and served on the other party ten days prior to the hearing date.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

31st October 2023