



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-001797

First-tier Tribunal No: HU/56517/2022
IA/09349/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 16 August 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

LAMIN KARAMO BAJO

Respondent

Representation:

For the Appellant: Mr S Walker, Senior Home Office Presenting Officer
For the Respondent: (No appearance) JKR solicitors

Heard at Field House, on 2 August 2024

DECISION AND REASONS

1. The Secretary of State for the Home Department brings this appeal but, to avoid confusion, the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge C L Taylor, promulgated on 20 March 2024.

Background

2. The Appellant is a Gambian national who entered the UK as a student on 11 April 2003. The appellant's leave to remain in the UK expired on 30 June 2006. On 7 March 2016 the appellant was served with a notice of liability to administrative removal.

3. On 11 May 2021 The appellant applied for leave to remain under paragraph

276ADE(1)(iii) of the Immigration Rules (20 years residence). The respondent refused that application on 11 May 2021.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge CL Taylor ("the Judge") allowed the appeal on Article 8 ECHR grounds, finding that the appellant has been in the UK for a continuous period of at least 20 years.

5. The Respondent lodged grounds of appeal, and, on 18 April 2024, First-tier Tribunal Judge Boyes granted permission to appeal, stating

2. The grounds of appeal assert that the Judge erred by failing to give any or sufficient reasons for finding that the appellant was in the UK between 2007 and 2011.

3. Permission is granted. The grounds are simple, the claimed error is identified with clarity and explained and it is clearly arguable. The Judge was required to explain why she accepted that the appellant was in the UK and the evidence which supported that contention which arguably she did not.

4. Permission is granted.

Preliminary Matter

6. This appeal hearing was listed for 10am on 2 August 2024. By 10:40am there was still no appearance by or on behalf of the appellant. Tribunal staff telephoned the appellant's solicitors' offices (in Birmingham and London) repeatedly, and the phone calls were not answered.

7. The Senior Home Office Presenting Officer moved the grounds of appeal in a hearing which concluded at about 10:50am. After I had reserved my decision, tribunal staff made contact with counsel instructed for the appellant, who said that he had not received notification of the hearing.

8. The case file clearly discloses that the hearing was notified to counsel's instructing solicitors at 14.04 on 14 June 2024.

The Hearing

9. For the Respondent, Mr Walker moved the moved the grounds of appeal. He reminded me that this appeal is about 20 years residence in the UK. He said that the Judge failed to give reasons for allowing the appeal after acknowledging that there is gap in the evidence between 2007 and 2011.

10. To test the position for the appellant, I suggested to Mr Walker that if the appellant's representative was with us he might argue that there may not be documentary evidence for the years 2007 to 2011, but there are other strands of evidence to bridge the gap.

11. Mr Walker replied that if there were no other credibility issues, then oral evidence might bridge the gap between 2007 and 2011. Mr Walker asked me to allow the appeal and set the decision aside.

Analysis

12. The principal question for the First-tier Tribunal was whether or not the appellant could prove that he has been in the UK for a continuous period of 20 years. It is Home Office guidance that an applicant for leave to remain on the basis of 20 years continuous residence should produce documentary evidence for each 12 month period within the 20 years. That guidance is not a requirement of the immigration rules.

13. At [11] and [12] of the decision, the Judge records that parties agree that the documentary evidence stops in 2007, and only resurfaces in 2011. The Judge tacitly acknowledges that, to succeed, the appellant has to produce evidence to bridge that gap.

14. At [13] the Judge places weight on statements from the appellant's witnesses and uses that evidence to bridge the gap. At [14] the Judge takes a holistic approach to all of the evidence and finds that it is more likely than not that the appellant remained in the UK continuously from his known date of entry. There, the Judge manifestly applied the correct standard of proof when weighing the totality of evidence.

15. The weight to be attributed to each strand of evidence is a question for the First-tier Judge.

16. A fair reading of the decision demonstrates that the Judge applied the correct standard of proof. The Judge carried out a holistic assessment of each strand of evidence. There is nothing unfair in the procedure adopted nor in the manner in which the evidence was considered. There is nothing wrong with the Judge's fact-finding exercise. The respondent might not like the conclusion that the Judge arrived at, but the correct test in law has been applied. The decision does not contain a material error of law.

17. The decision does not contain a material error of law. The Judge's decision stands.

DECISION

18. The appeal is dismissed. The decision of the First-tier Tribunal, dated 20 March 2024, stands.

Signed **Paul Doyle**
August 2024
Deputy Upper Tribunal Judge Doyle

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