IAC-FH-CK-V3

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/08601/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3 November 2014	**On 31 December 2014**
Prepared 6 November 2014	

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MR MOHAMED DJENANE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Emeka Pipi, Counsel
For the Respondent: Ms L Kenny, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Algeria, date of birth 24 February 1980, appealed against the Respondent's decision dated 28 February 2013 to make removal directions under Section 10 of the Immigration and Asylum Act 1999, a form IS.151A having been served on the same date and an asylum/human rights-based claim having been dismissed.

2. That appeal came before First-tier Tribunal Judge E Grant (the judge), who on 26 July 2013 dismissed the appeal based on paragraph 278B of the Immigration Rules and on Article 8 ECHR grounds and no anonymity order was made.

3. The Appellant appealed against the judge's decision which was refused by Designated Immigration Judge McClure on 16 August 2013. The application was renewed to the Upper Tribunal and was again refused on 12 September 2013.

4. By order of Mr Justice Collins, in judicial review proceedings, the Upper Tribunal was directed to grant leave to appeal and hear a substantive appeal against the order of the First-tier Tribunal of 26 July 2013. Accordingly on 2 September 2014 Mr C M G Ockelton, Vice President of the Upper Tribunal, granted permission in accordance with the decision of the High Court.

5. With the grant of permission the Respondent on 3 October 2014 put in a response under The Upper Tribunal Procedure Rules Rule 24 opposing the appeal. The Respondent complained that the Upper Tribunal's decision did not demonstrate, as Mr Justice Collins' decision had also not demonstrated, what was the arguable error of law.

6. There are no factual issues with the documents that the judge took into account. It was clearly reasoned why the judge found that there was documentary evidence to support the Appellant's claim of continuous presence in the United Kingdom for a period of nine years and nine months running from 2003. The judge also correctly identified the three documents being an enrolment letter of 30 January 2003, a pass certificate in Computing level 2 of 25 March 2003, a letter from the London College of Computing and Education Limited dated 23 August 2002, an enrolment letter made reference to a deposit paid on 16 September 2002 and a letter of 15 January 1998 confirming the Appellant's enrolment on a short English language course with The English Language Consultancy Limited. The judge also had the material of a letter from a defunct business described as Balham Glass Works Limited dated 16 July 2002 on a 'to whom it may concern basis' and stating that the Appellant was employed by the company from November 1997 to May 2000. The letter gives no indication as to what form of employment that took. There were also some payslips from Balham Glass Works Limited and from a later employer, Raja Tandoori which are undated, said to commence on 20 March 2001.

7. There really was no explanation given to the judge as to how the early period is completely without any documentary evidence and yet the period from 2003 and onwards is plainly supported by documentary evidence. In those circumstances the judge was faced with the evidence of three of the Appellant's friends. First, there was Mr Brahim Begredj, who considered the Appellant to be his younger brother who he has been accommodating for many years as a family member. He said that he met the Appellant in March or April of 1998 in the Finsbury Park area of London in a café. Mr Kamal Benamer-Belkacem speaks to the period from May 2004 of

meeting the Appellant in September and October 2004 and their close contact thereafter.

8. A statement from Mr Djillali Azzout, who is a cousin of the Appellant and plainly a friend of the Appellant, asserted that the Appellant has lived continuously in the United Kingdom since January 1998. Other statements recited by the judge make reference to persons who made statements knowing the Appellant since 2007 and 2006. But one from Djamel Ibesaine asserted that he met the Appellant in 2002 as a friend.

9. Another, Rachid Belouar, claimed to have known the Appellant in the United Kingdom since sometime in 2000. Nasser Eddine Hedjem referred to knowing the Appellant since 1999 as a friend. Similarly Sidahmed Khalfa claimed to have known the Appellant in the United Kingdom since 2002. All those persons appear to have known the Appellant in a false identity which he had adopted, namely Farid Zouai, with the exception of Imran Kalam, who claimed to have known the Appellant in the identity he now uses. The judge did not refer to the letters of reference and that may have been because having looked at the evidence in the round and concluded that the live evidence that was called from the witnesses was unreliable and that the untested letters did not add any weight to the claim. I understand that none of those persons attended the hearing to give evidence to support what they had put in writing.

10. It may also be that the Appellant's own admitted circumstances did not really bring him within the description given in the reference letters of being trustworthy, honest and honourable or a model citizen of the UK.

11. Having considered the Record of Proceedings it seems to me that the judge was not under any obligation to put her misgivings upon the documentation from the London College of Computing and Education, Balham Glass Works, the Raja Tandoori evidence or from The English Language Consultancy Limited to the Appellant's representatives.

12. It is also very difficult to see how a limited company as Balham Glass with an employees would not be making deductions for national insurance and tax but it seems the gross pay was paid as such without deduction. Similarly the pay advice on the Raja Tandoori restaurant appears to have been made with no tax deducted during the relevant periods.

13. The judge was therefore presented with documentation which really could not be checked and its reliability was open to doubt.

14. Insofar as the witnesses called were concerned the judge made no adverse comments upon Kamal Benamer-Belkacem, whose evidence covered a period in which the judge had accepted the Appellant was in the United Kingdom. Therefore he added nothing in the disputed period of 1998 to 2003. As a fact the judge was entitled to

take the view that Mr Begredj and Mr Azzout had been illegal entrants to the United Kingdom who had no basis to remain although each of them had later done so on a different basis. Mr Azzout was allowed to remain, his claim having been considered, under the legacy arrangements. Mr Begredj, who was not granted refugee status, stayed on the basis of marriage to a UK national in due course.

15. I find that the fact that they had known of the Appellant's true identity but had been content to associate with him on a regular basis in the knowledge of him having no lawful status were matters to take into account when weighing their honesty and credibility. It does seem to me that the fact that they have made return visits to Algeria without greater knowledge of their claimed bases for seeking asylum really adds little to the matter and perhaps that it was of no real weight. In considering the grounds of appeal, I note that no complaint was made about the absence of reference to the letters that were provided. It seemed to me that the judge was entitled to give the un-tested references the weight she thought appropriate. As such the omission of reference to it was not a material error of law.

16. Therefore on those issues I do not find that the original Tribunal made any error of law.

17. There was a further ground of challenge relating to the judge's consideration of Article 8 of the ECHR. When the judge was considering the matter she was obviously doing so in the context of the evidence that did establish that the Appellant had been in the United Kingdom since 2003. The original grounds dated 29 August 2013 did not refer to Article 8 as an error of law. The original grounds to the First-tier Tribunal, which are undated, simply refer to the Appellant having established a private and family life which had not been considered by the Secretary of State. As it happens the Secretary of State's decision letter of 28 February 2013 did address Article 8 as a consideration arising under the Immigration Rules in respect of private life issues. So far as I can tell no challenge was made in the original grounds of appeal against that element of the decision.

18. In the further grounds to the Upper Tribunal, undated but attached to the application of 6 August 2013, again no issue was raised in relation to whether or not the Appellant could succeed under private life provisions within the Immigration Rules but rather made a general Article 8 claim.

19. The premise of much of that claim was based on the assertion that the Appellant had been in the United Kingdom for fourteen years, which of course was not established, and on the face of it there was no evidence from the Appellant that he has any family life in the United Kingdom as contained within his statement other than the passing reference to his being provided with accommodation by his cousin.

20. It really seems extremely difficult to see what family life could be relied upon. The Appellant's statement dated 2 July 2013 at its highest in paragraph 14 referred to the length of time he had been in the United Kingdom, the fact that he considered the

United Kingdom as his home and was well-integrated into the community and that he had established a private life here. Again he relied upon some fifteen years continuous presence in the United Kingdom.

21. It is difficult to see what material there really was concerning even the extent of private life and the significance of interference in it. The judge found that the Appellant had a private life in the United Kingdom. The judge found Article 8(1) ECHR rights were engaged and properly considered whether or not the decision by the Respondent was in accordance with the law and properly served the purposes arising under Article 8(2) of the ECHR. The judge gave reasons why she concluded that the Respondent's decision was proportionate and dismissed the appeal accordingly. The judge's reasons do not disclose any error of law: This may indeed be why the original grounds of appeal to the Tribunal made no reference to them, settled as they were by Counsel.

22. In these circumstances I find that the judge made no material error of law in relation to the assessment of the Article 8 ECHR claim. The original Tribunal's decision stands.

NOTICE OF DECISION

The appeal is dismissed.

ANONYMITY ORDER

No anonymity direction was requested nor is one necessary or appropriate.

Signed Date 30 December 2014

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT
FEE AWARD

As the appeal has failed it is not appropriate to make a fee award, assuming a fee has indeed been paid.

Signed Date 30 December 2014

Deputy Upper Tribunal Judge Davey