Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/18910/2013

THE IMMIGRATION ACTS

Heard at Birmingham Sheldon Court	**Determination Promulgated**
On 14th August 2014	**On 9th September 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

KARIM KHERBACHE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Trevelyan (Counsel)
For the Respondent: Mr Richards (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge North, promulgated on 14th March 2014, following a hearing at Bennett House, Stoke-on-Trent, on 10th March 2014. In the determination, the judge dismissed the appeal of Karim Kherbache. The Appellant applied

for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Algeria, who was born on 5th August 1969. He appeals against the decision of the Respondent Secretary of State dated 15th May 2013, following his application that he had qualified under the long residence Rule on account of having lived in this country for fourteen years under paragraph 276A-D of HC 395.

The Judge's Findings

3. The judge had regard to the fact that the Appellant had earlier claimed residence in the United Kingdom in the name of Toni Cristallo, as an Italian national, whereby he had produced an Italian residence card issued in 2005 in Rome, although the Appellant now maintained that it was not a genuine residence card and that he got it from someone in London about eighteen months or two years previously, at the request of his lawyers. The judge held that the Italian identity card was genuine. If the card was not genuine, then the Appellant's credibility was damaged because he had made false representations to Leicester City Council that he was a European Union citizen.

4. Second, the judge had regard to the Appellant's relationship with Lesley Furness, whom he claims to have met in Leicester in 1999, following which they separated for a short while, but now claimed to have resumed relationship. They had not lived together between May 2011 and October 2013. The judge held that this evidence was disingenuous.

5. Miss Furness did not in her witness statement say that she and the Appellant had not been living together from 2011 to 2013. She had not said in her witness statement that she and the Appellant had resided continuously from 1999 onwards.

6. Third, regard was had to the evidence of Nigel Furness, the brother of Lesley Furness, but this evidence was also rejected as unreliable. Finally, regard was had to Article 8 rights but the judge held that the Appellant could not succeed under this either. The appeal was dismissed.

Grounds of Application

7. The grounds of application state that the allegation that the Appellant's partner had been dishonest was misconceived because this allegation was not put to Miss Lesley Furness, such as to enable her to deal with it.

8. Moreover, there was documentary evidence before the judge that supported her testimony.

9. On 22nd April 2014, permission to appeal was granted.

Submissions

10. At the hearing before me on 14th March 2014, Mr Trevelyan submitted that once it was accepted that the Appellant had arrived in the UK in 1999, it was most unlikely on the evidence before the judge, to conclude that he had then left to go to Italy from where he got an Italian residence card, not least because page 1 of the Appellant's second bundle shows evidence of his having opened a bank account on 6th August 1996, which was consistent with his statement that he had entered the UK in February of that year. Moreover, at B1 of the Respondent's own bundle, there is a letter dated 10th April 2013 which confirms that the Appellant registered with a doctor on 11th April 1997, and the letter from the doctor makes it clear that he has remained here.

11. In addition, the skeleton argument (at paragraph 7) refers to a letter at the Appellant's second bundle (at page 143) from Miss Culleson that she met the Appellant in March or April 1999. But most importantly, there was in the Appellant's second bundle (at page 9 to 10) confirmation of his having completed sixteen qualifying years for having made national insurance contributions, which would enable him to have access to state pension benefits. Furthermore, page 132 of the Appellant's second bundle also confirms this.

12. Therefore, all the evidence was that, not only was the Appellant in the UK since 1996, but he had been working here consistently, such as to enable him to accumulate the correct number of national insurance contributions. The reason now why there was an error of law in Judge North's determination was that there is no evidence at all that IJ North had assessed any of these documents. Certainly, no statement is made to this effect by the judge.

13. The failure to have regard to these documents, and yet to make a finding that the evidence given by the Appellant and his witnesses was unreliable, is an error of law. The evidence has to be looked at in its entirety before findings of fact in this regard can be made.

14. Therefore, Mr Trevelyan submitted that this matter should be remitted back to the First-tier Tribunal for a de novo hearing to enable all the evidence to be properly taken into account. The Upper Tribunal has established that where there is "procedural unfairness in the way that the hearing is conducted, the only proper course of action is for the matter to be remitted back to the First-tier Tribunal.

15. For his part, Mr Richards relied upon his Rule 24 response. He submitted that Judge North did not fall into error because it was a matter for the judge as to what weight he should place on the evidence before him. This was especially the case with respect to someone who had entered with a Greek passport and subsequently submitted Italian residence documentation. The judge was entitled to be sceptical.

16. In reply, Mr Trevelyan submitted that this was incorrect because the evidence from Miss Lesley Furness directly contradicted the findings of the judge. The judge had said that Miss Furness had only in cross-examination stated that she was not living together with the Appellant between 2011 and 2013. This is simply incorrect. This is because she makes it clear at B9, in the Home Office's own bundle, at paragraphs 2 to 3, that when she lost her job it was considered prudent for them in March 2011 to separate, until such time as they were able to start living together again. Moreover, the Appellant's own letter at B11 to the Home Office confirms that he was not living with Miss Furness after 2011.

17. Nigel Furness himself, the Appellant's partner's brother, stated in his witness (see the first bundle at page 5) that, "we all spent Christmas together at my parents" and states that the Appellant and his sister spent holidays together every year. None of this evidence was taken into account.

Error of Law

18. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside that decision. My reasons are that the judge here has failed to have regard to vital documentation in reaching his conclusions as to fact. A failure to have regard to relevant circumstances is an error of law. In this case the error is such that it goes directly to the assessment of the veracity of the witnesses, namely, of the Appellant, his partner, Miss Lesley Furness, and her brother, Mr Nigel Furness.

19. The documentary evidence was clear that the Appellant had not been living with Lesley Furness from 2011 to 2013, and this was a fact that neither of these two persons had attempted to conceal from the Tribunal. Secondly, the documentary evidence was clear that the Appellant had opened a bank account on 6th August 1996, had registered with his doctor on 11th April 1997, and had accumulated sixteen qualifying years of making national insurance contributions, by working in the UK for that period of time. Yet, none of this evidence was taken into account by the judge. Consequently, the findings on credibility are unsafe. For this reason, the only proper course of action is for this matter to be remitted back to the First-tier Tribunal under Practice Statement 7.2, to be heard by a judge other than Judge North.

Decision

20. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remit this matter back to the First-tier Tribunal to be heard by a judge other than Judge North de novo.

21. No anonymity order is made.

Signed Date

Deputy Upper Tribunal Judge Juss 8th September 2014