



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: IA/29448/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 30 July 2014**

**Determination**

**Promulgated**

**On 12 August 2014**

**Before**

**UPPER TRIBUNAL JUDGE ESHUN**

**Between**

**ABDUL KARIM CHABOUR**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss E King, Counsel, instructed by Gulbenkian Andonian Solicitors

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant has been granted permission to appeal the determination of First-tier Tribunal Judge Oxlade dismissing his appeal against refusal of the application which he made on 5 July 2012 for leave to remain on grounds

of long residence, pursuant to paragraph 276B of the Immigration Rules 395, as amended. The respondent did not accept the appellant's claim that he entered the UK lawfully in 1986. Further, when he was arrested in 2008 he told the police that he entered unlawfully in 2000, using a forged French passport, and without going through immigration control.

2. Further, as the appellant had an unspent conviction for possessing a false identity, the respondent considered that it was undesirable for him to be granted leave to remain due to his character and conduct. The appellant had also failed to submit the certificate showing that he had passed the life in the UK test or to obtain a relevant ESOL qualification. Although the appellant had applied for limited leave to sit the test, as he had not satisfied paragraph 276B(i) and (ii) he was not eligible for limited leave to sit the test. The respondent considered that as the appellant neither met the partner or parent "routes" and as he failed to show that he had been in the UK for twenty years or that he had no ties, including social, cultural or family, with Algeria, his claim in respect of his private life under paragraph 276ADE of the Rules failed.
3. At the commencement of the hearing before the judge, the appellant's Counsel, Miss King, said that the appellant pursued a claim to have met the long residence requirements set out in paragraph 276B. Whilst he had not met the knowledge of English life test, he could be granted limited leave to do so for two years; this was provided by 276A2 where the only reason for the application's failure would be the failure to show that the test had been met. In the alternative, he relied on Article 8 ECHR in the "classic" **Razgar** sense, the application having been made before the Statement of Changes on 9 July 2012.
4. The appellant is a national of Algerian born on 3 January 1966.
5. The judge heard oral evidence from the appellant and five witnesses.
6. The appellant said in evidence that he came to the UK in 1986 with a valid passport, which was amongst his possessions. When he moved from his cousin's house in 2001, the briefcase containing his possessions including his payslips was left behind. He did not report the loss of his passport to the Algerian Embassy, as he was without any proof. It did not cross his mind to report this to the respondent as he was living in the UK illegally and working on the black market. He agreed that when the police stopped him in 2008, he had said that he entered in 2000. This was because he had a false French identification with him, which was made in 2000. The document was not in his name. He knew it was fake. It had his picture on it but a different name. The appellant agreed that the police report accurately reflected what he said to the officer and that it was untrue. He chose the year 2000 as opposed to 1986 as he was worried.
7. Since 1986 he had worked for many employers and had used the name Michel Gacob. He used the same name throughout. The first identity card

was issued to him in 1987 in the name of Michel Gacob. It expired in 1997. The second one ran from 2000. He had a national insurance number in that false name. The national insurance number was given to him by the National Centre when he took three payslips to them. He did not have any tenancy agreements, and when he had health problems, he went to a hospital and not a GP.

8. The appellant gave evidence about how he met Dr Alex Khot (not a GP) who had written a letter in 2009 in support of his application and Tracey Tarrant who said in her witness statement written in 2009 that she had known him for eleven years at that point.
9. The appellant said his previous partner was Siohban Clifford-Walsh who was not attending as a witness. He denied that Silvia Palermo had been his previous partner, although this was stated in his statement. He said this was mistakenly written. He would rely on his cousin's evidence, Khelaf Chabour, who came to the UK in 1987, having completed military service. It was this cousin with whom he lived and who lost his briefcase.
10. The appellant said in evidence that he was not currently living with anyone, but he had a new girlfriend called Dawn Buckley and they had been together a year but were not living together. She was born in the UK. He last went to see her in Hove a while ago. He does not work 100% of the time, and cleans gardens for cash. No tax is paid.
11. He said that when he was served with a notice of removal in 2008 he did not go to Algeria, as England was his home. He would, now at the age of 50, have to start his life all over again. He has eleven siblings with his parents, a younger sister and brother looking after his parents. There are also aunts and uncles in Algeria.
12. The second witness to give oral evidence was Khelaf Chabour. He produced a photograph showing the appellant in a group of people which was taken in the witness's house in Wood Green 1987. Khelaf Chabour said that the appellant had lived in the UK since 1981, apart from the two years when he did military service in Algeria from 1986 to the end of 1987, which was for almost two years. Khelaf Chabour said he went to Algeria in January 1986. In May the appellant had asked him for advice about going to London as he wanted to visit. He gave the appellant some addresses and he thought it was June 1986 that the appellant left for the UK. To his knowledge the appellant has not left the UK since then. They never discussed why the appellant had not returned to Algeria. He had no reason to think that the appellant was in the UK lawfully.
13. Khelaf Chabour said the appellant is known to people as "Bekim" and also goes by the name of Michel. The appellant lived with him in 1999 to 2001 and during this time, he never saw the appellant's passport. He would not have had any reason to do so. There was a briefcase with documents in it. He denied there were any clothes in it, as the statement suggested. He

did have other stuff, clothes, a clock and he, the witness, put the briefcase in the loft. He did not take the briefcase with him when he moved, as his marriage was patchy and his wife and children left for Newcastle in 1999 and he was busy trying to repair his marriage. He assumed that the appellant had taken the briefcase. It was only afterwards that the appellant asked for it, and it became an issue. He did not visit the appellant in prison, as he was in Newcastle and the appellant was in Lewis Prison. They do not see one another often.

14. The third witness to give evidence was Madjoudi Sajid. He said he knew the appellant from Algeria as they were born in the same town and so had known each other since childhood. The witness came to the UK in 1990. He thought the appellant left Algeria in 1986 when the witness was 16 years old. He had heard the appellant went to England. They made contact in 2000/1, as the appellant heard the witness had a restaurant and came to visit him. As to the suggestion that the appellant had come to the UK in 2000, he believed that the appellant came long before that in 1986. If someone leaves the village you get to hear about it, he said. He said the appellant is known as Bekim. He heard the appellant was in prison in 2000, he thought on false identity. Since meeting with the appellant, he told the appellant to return to Algeria but he refused.
15. The fourth witness to give evidence was Mary Buckley. She had worked in the city and her favourite restaurant was "Tatsuso", which she believed was closed in the late 1990s. She had spoken to the appellant about this restaurant and was convinced from the details that he had given, that he had worked there. She said she met the appellant in 2013. She was in court to confirm his employment and offer support generally. She knows his official name but he is known to everyone as Bekim. Very soon after they first met she knew he had problems. He has not told her exactly how long he has been here.
16. The fifth witness was Sabir Chabour. He said he and the appellant are cousins. Their fathers are brothers. They knew each other as children. He knows the appellant came to the UK in 1986 and the witness came in 2001. He also knew that the appellant had not left since then. He was unsure but said he saw the appellant in the UK in 2000. He assumed that the appellant was in the UK in 1986 as there were letters from the appellant and phone calls, which the family would have received. He also spoke to the appellant at the time.
17. The sixth witness was Karim Dellalli who said he met the appellant in the UK in 2000 or 2001. He did not know that the appellant had used a false identity and only recently heard through friends that the appellant went to prison for working illegally.
18. The judge said the first issue she had to determine was whether the appellant had been in the UK for a continuous period of fourteen years prior to the service of notice of liability of removal, which was first served

on 12 August 2008; so continuously would be from 13 August 1994 to 12 August 2008. No issue was raised by the appellant as to the service of the notice of liability for removal on 12 August 2008.

19. The judge found that the appellant had not produced any documentary evidence in support of his claim that he lost his briefcase in July 2001 which contained valuable possessions. Accordingly he relied on his oral evidence, the oral evidence of the witnesses who attended the hearing and the letters of support from friends in the UK, most of which were written in 2009. The judge noted that none of the witnesses claimed to have been in continuous contact with him throughout the time that he claims to have been in the UK, or the time necessary to meet the fourteen year rule.
20. The judge treated the appellant's evidence with circumspection, because his case is that (i) he lied to the police when questioned in 2008 about the date of his entry to the UK which he said was August 2000, (ii) he adopted an identity which was not his from 1986 onwards and had false documents made to substantiate those from which he obtained employment and a bank account, (iii) he was convicted of possessing a false instrument.
21. The judge noted that in his witness statement the appellant provided a chronology of where he worked and lived but did not deal with the period 2000 onwards as to where he was living or what he was doing, save to say that he had a five year relationship from 2004 to 2009. He said that from 1994 to 2000 he lived with a cousin, but his cousin put the period when they lived together as 1999 to 2001. She did not find that this is so particularised that it lends weight to the claim. The judge also found it inconceivable that as the appellant and Khelaf Chabour claimed to have lived together that Khelaf Chabour could have been oblivious to the appellant using a false name in which he would at the time have received tax documents and bank statements. Samir Chabour relied on hearsay evidence of his cousin having arrived in the UK but gave no evidence as to how he recalled that it was exactly 1986. Sajid Madjoudi's letter written in 2009 referred to his knowing the appellant for fourteen years, but which changed in oral evidence to saying that they grew up in the same area in Algeria, and he knew that the appellant had left for the UK in 1986.
22. The judge found that the difference was irreconcilable. In oral evidence the witness said he did not know how the appellant financially supported himself, but this conflicted with his letter in which he referred to the appellant as someone whom he had been financially supporting for many years. In his letter he referred to the appellant as a "member of his family", but did not elaborate on this at the hearing.
23. The judge also considered that the appellant placed reliance on letters in the bundle from people whom he claimed he knew through Sajid Madjoudi yet the chronology did not fit. She gave the example of Dr Khot's letter written on 10 March 2009 which said that he had known the appellant for

roughly ten years which would have meant that he met the appellant in approximately March 1999, but as the appellant did not first meet up with Sajid Madjoudi until 2000/1 (who introduced him to Dr Khot) or moved to that area until then, that evidence was not reliable. The same could be said of the witness statements of Tracey Tarrant, Fethi Chiki, and Kamal Behtejdal.

24. The judge found taken as a whole that the evidence presented by the appellant as to when he arrived in the UK was unreliable. Although he said that he first entered illegally, he did not say the basis of his entry. Whilst he said that his passport was lost by virtue of missing briefcase, he did not obtain anything from the Algerian Embassy to show from their records when he first applied for a passport and when it was issued. The implication of the witness' evidence was that the briefcase was left by accident when the house was sold, but there was no evidence that anybody returned to the house to see if the new owners still had it. He was not satisfied that this account was a reliable explanation for the absence of documentation for this relevant period.
25. The judge was not satisfied on the evidence that the appellant has been continuously living in the UK for the period claimed by him. The burden rests on the appellant to show that he was in the UK for a continuous period from 1994 onwards. She was not satisfied that the appellant has discharged the burden of proof upon him of showing that he has been in the UK continuously throughout that period, 1994 - 2008.
26. The grounds of appeal relied by Counsel, Miss King, argued that the judge failed to properly consider the evidence of the key witness, Khelaf Chabour, who had said that he did know of the appellant's false name. Indeed at paragraph 28 the judge recorded Khelaf Chabour's evidence that the appellant also went by the name of Michel. Therefore the judge's finding at paragraph 60 that it is inconceivable that as they claimed to have lived together that he could have been oblivious to the appellant using a false name was founded on a mistake as to the evidence given and undermined the judge's conclusion regarding the reliability of the evidence.
27. I do not accept Miss King's argument as I find that the judge's finding at paragraph 60 was in reference to Khelaf Chabour's claim that he had no reason to think that the appellant was in the UK illegally. The implication of the finding is that as Khelaf Chabour and the appellant claimed to have lived together and he had known that the appellant was using a false name in which he would have received tax documents and bank statements, then it stands to reason that he would have known that the appellant was in the UK illegally. I find that this was a finding that was reasonably open to the judge.
28. The second argument made by Miss King was that the appellant gave evidence that he had lost all proof of the identity that he had adopted.

Therefore it was irrational and unreasonable to expect the appellant to seek to obtain a record from any official source when he has no proof that those records relate to him.

29. I find no error of law committed by the judge on this issue. The appellant was seeking to establish that he had entered the UK in 1986 and had remained here ever since. He claimed that the briefcase which contained his valuables and papers had been left behind when his cousin sold his house in 2001. Therefore the brief case was lost. In the circumstances it was reasonable for the judge to find that given that the briefcase contained valuables and important papers including the appellant's passport, he would seek to return to the house to see if the new owners still had it. In any event, the appellant had not reported the loss of the briefcase, his valuables and his passport to the police in the UK or to the Algerian Embassy. Had he done so, it would have given him the much needed proof to support his claim that the briefcase had been lost and therefore he had lost all proof of the identity that he had adopted. Accordingly, I find that the judge's decision on this issue was not irrational or unreasonable.
30. Miss King's third argument was in respect of paragraph 66 of the judge's decision. The judge held as follows:

"I am not satisfied that the appellant was without the means absence of a passport in his name would Miss King's submission was that the respondent's opposition to the appellant's claim to have been in the UK since 1968 was his statement to police that had arrived in 2000; therefore, the respondent was relying on 2000 as being true. In her view it had to be one or the other. I am not satisfied that is the proper approach. In essence the burden rests on the appellant to show that he was in the UK for a continuous period from 1994 onwards."

31. Miss King argued that this paragraph was unintelligible and that it was not possible to establish what the judge meant, even by context. I do not accept that paragraph 66 is unintelligible as Miss King appears to suggest. The first line is certainly muddled but I gather from paragraph 66 that the judge was referring to a submission made by Miss King in respect of the respondent's reasons for rejecting the appellant's claim that he has been in the UK since 1986; which was because of his statement to the police that he arrived here in 2000. Consequently the respondent was relying on 2000 as being the truth. The respondent could not have it both ways. In her view it had to be either 1986 or 2000. The judge was not satisfied with that approach and quite rightly in my view found that the burden was on the appellant to show that he was in the UK for a continuous period from 1994 onwards, and had failed to discharge that burden of proof upon him.

32. I find for the reasons given that the judge did not make an error of law in her decision.
33. The judge's decision dismissing the appellant's appeal shall stand.

Signed

Date

Upper Tribunal Judge Eshun