Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/50689/2013

THE IMMIGRATION ACTS

Heard at Field House **Determination Promulgated**
On 27 July 2014 **On 26 August 2014**

Before

JUDGE OF THE UPPER TRIBUNAL HANBURY

Between

ABDEL MALEK BOUAMRANE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Lingorthy
For the Respondent: Mr E Tufan, a Home Office Presenting Officer

DETERMINATION AND REASONS FOR FINDING OF NO MATERIAL ERROR OF LAW

Introduction

1. This is the Appellant's appeal against the decision of the First Tier Tribunal to dismiss his appeal against the Secretary of State's decision to refuse him leave to remain in the UK. The Appellant was granted permission to appeal to the Upper Tribunal by Judge of the First Tier Tribunal Simpson on

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21st May 2014 because Judge Simpson considered that the grounds disclosed arguable errors in his approach to the evidence which was said to show that the Appellant had been resident in the UK for a continuous period of twenty years. In particular, the Judge of the First Tier Tribunal who decided the appeal (Judge Sullivan) was criticised for denying the Appellant the opportunity to present evidence in the form of a DVD. Immigration Judge Simpson decided that the grounds disclosed at least arguably material errors of law.

2. The Appellant's claimed immigration history is that he came to the UK in 1993 and had worked throughout the following twenty years. Because he was in the "black economy" he had not contacted the HMRC. He was also unable to produce medical records for his claimed period of residence. Nevertheless, Immigration Judge Sullivan did accept that the Appellant had been in the UK since 1996 and then, due to a change in the law, was allowed to work here. Having analysed the evidence produced, the Immigration Judge concluded that there was a gap in the alleged twenty-year period and dismissed the appeal both under the Immigration Rules and on human rights grounds on 8th April 2014. His decision was promulgated on 15th April 2014.

The appeal to the Upper Tribunal

3. By a Notice of appeal lodged on 2nd December 2013 the Appellant, an Algerian national born on 17th November 1970, attached his grounds of appeal. These state that Immigration Judge Sullivan had reached the incorrect conclusion in that the Appellant qualified under the twenty-year rule and had erred in law "regarding the Applicant's human rights under Article 8." There was a failure to consider the insurmountable obstacles of relocation to Algeria and whether it would be reasonable in all the circumstances for him and his girlfriend to live there.

4. Following the grant of permission on 21st May 2014 standard directions were sent out requiring a formal application to be made if any fresh evidence was to be sought to be adduced before the Upper Tribunal. On 10th June 2014 the Secretary of State submitted a Rule 24 Response which indicates that the criticism of Immigration Judge Sullivan in relation to the failure to play the DVD was ill-founded. The Appellant's representative had indicated his contentment at proceeding with the hearing in the absence of suitable equipment on which to play the DVD and there was no evidence to back up the Appellant's assertion that he had been in the UK for a full twenty year period. Indeed, there were numerous gaps in the documentation he supplied, particularly in relation to the period prior to 1996 identified by the Immigration Judge. In the circumstances, Immigration Judge Sullivan had been correct to dismiss the appeal.

5. The hearing was fixed for 22nd July 2014 at 2.00 pm. Both parties were represented. In the case of the Appellant, the representative was the

same legal representative who appeared before the First Tier Tribunal. I took a full note of the submissions made.

6. Mr Lingorthy said that although he no longer criticised the Immigration Judge for his failure to play the DVD, it was relevant to look at the numerous photographs produced. These, in his view, demonstrated that the Appellant had been in the UK since at least 1993. He said that his client had used a false French passport to enter the UK in that year and therefore qualified under the twenty-year rule. Further, or alternatively, the Appellant had a claim under Article 8 of the European Convention on Human Rights ("ECHR") due to a long period of residence. I was invited to "re-make the decision" if I was in favour of the grounds. It was not suggested that supplemental evidence was required for me to do this.

7. Mr Tufan began by explaining that Judge Simpson, who granted permission, had plainly got confused over the issue of the DVD player. There was no insistence that the DVD was played and no application for an adjournment. The burden of proof rested on the Appellant and Immigration Judge Sullivan had carefully analysed the evidence given and reached conclusions that were open to him. The Article 8 claim did not hold up in the light of recent case law. However, it was acknowledged that the Appellant may have an opportunity to apply to join his girlfriend, Ms Martinez, who is in the UK.

8. Finally, Mr Lingajorthy submitted that his client had not persistently evaded immigration controls and bearing in mind that he had established a private or family life here the burden rested on the Respondent to show that the removal was justified.

9. At the end of the hearing I reserved my decision as to whether or not there was some material error of law in the decision of the First Tier Tribunal.

Discussion

10. The issues before me are:

    (i) Whether Immigration Judge Sullivan was entitled to conclude that the Appellant had not established a continuous period of residence in the UK for twenty years?

    (ii) Whether Immigration Judge Sullivan had failed to consider adequately or at all the guidance on Article 8 of the ECHR and in particular the obligation on the UK Government "not to inhibit" the development of family life in the future flowing from the case of *R (Ahmadi) v. Secretary of State for Home Department* [2005] EWCA Civ 1721?

    (iii) Whether the manner in which Immigration Judge Sullivan had conducted the hearing had been so procedurally unfair as to deny the Appellant a proper opportunity to present his case?

11. I will deal with these points in turn.

(i) *Twenty year period of residence*

12. The Immigration Judge fully dealt with this issue in Paragraphs 46 - 57 of his determination. Whilst acknowledging that persons will be unable to present evidence dealing with every day of their presence over a period of twenty years, the Immigration Judge was entitled to look critically at the evidence and in particular the substantial gaps that there were. Evidence for the period 1993 to 1996 was backed up by a Mr Azzedine Ghazali, but he did not attend the Tribunal to give oral evidence. In the circumstances, the Immigration Judge was entitled to attach little weight to his evidence and to point out discrepancies between what Mr Ghazali said and important parts of the Appellant's own evidence. The Immigration Judge was clearly not persuaded to the civil standard of proof that the Appellant lived with Mr Ghazali in 1993 as the latter claimed.

13. There was oral evidence dealing with the Appellant's presence in the UK in 1995, but again this was fully dealt with by the Immigration Judge in Paragraph 53 of his determination. The assessment of how much weight to attach to the evidence of Laadjal Kamel was a matter for the Immigration Judge and not for this Tribunal to second-guess. There were a number of discrepancies in the evidence given by Mr Kamel, who did attend the hearing to give oral evidence. These are alluded to by the Immigration Judge in his determination.

14. There was a period of nine years (between approximately 1998 and 2007) where there was minimal if any evidence at all pointing to the Appellant's presence in the UK. There was a lack of NHS, housing or HMRC records over the whole period of the Appellant's presence in the UK, but the Immigration Judge was able to accept the Appellant's presence from 1996 onwards, albeit that that presence had not been "continuous". The lack of proper account of the Appellant's activities in the UK over the whole period of twenty years on which he relied for the purposes of the Immigration Rules more than justified Immigration Judge Sullivan's decision that the Appellant had not discharged the burden which rested on him in relation to this claim.

(ii) *Article 8*

15. This is not a ground on which the Appellant was specifically granted permission to appeal to this Tribunal, but nevertheless it is appropriate to consider it.

16. The Immigration Judge referred correctly to recent case law, although he did not specifically refer to the case of *Ahmadi*. The Immigration Judge specifically referred to the recent cases of *Gulshan*, *Nagre* and *Nasim*. His approach cannot be faulted, although he dealt with the issues concisely.

In summary, he did not find that the Appellant had produced adequate evidence that his relationship with Ms Martinez was any more than boyfriend and girlfriend. There was no certainty it would develop from private life into a family life. Indeed, the Immigration Judge thought that their relationship was in its early stages, as appeared to be acknowledged by Ms Martinez (see Paragraph 58 of the Determination).

17. The Appellant claims to have provided a great deal of assistance to a Mr Dahmani and there was evidence that Mr Dahmani would be adversely affected by the Appellant's removal from the UK. However, this was a matter that the Immigration Judge fully took into account in Paragraph 59 of his Determination. In summary, he was not persuaded that the Appellant's presence in the UK was "essential to Mr Dahmani's health" but did not dispute that some private life had been developed between them.

18. The Appellant's own ill-health was dealt with at Paragraph 60 of the Determination. Although he was on medication, this was not a reason for preventing his removal to Algeria and did not impact on the Article 8 dismissal.

19. In the end, having taken into account all factors placed before the Tribunal by the Appellant, the Immigration Judge was not persuaded that the decision of the Respondent to remove him was disproportionate. Wider considerations were involved and no "particular reason" had been given as to why he should be exempt from immigration controls. The rules were in place to support the public goal of effective immigration control because of the need to control those who are in the UK illegally and not paying taxes or contributing to the economy. I find these to be sound reasons for dismissing the Appellant's appeal under Article 8 of the ECHR. The Immigration Judge was plainly entitled to reach these conclusions on the evidence before him.

(iii) *Material Irregularity relating to the claim of the DVD*

20. When Immigration Judge Simpson granted permission to appeal on this ground he identified that the Appellant's representative did not seek an adjournment, as is clear from Paragraph 10 of the Determination. He specifically stated that he was happy to "go ahead without playing the DVD", a position which he maintained before the Upper Tribunal. In any event, the content of the DVD is perhaps not as significant as the Grounds of Appeal might suggest. It is said to contain photographic stills of the Appellant attending the Notting Hill Carnival. According to Mr Lingajorthy, at the hearing before the Upper Tribunal, it was unnecessary to play the DVD since the photographs on the DVD were placed before the Immigration Judge in any event. In the circumstances, I fail to see why this was pursued as a ground of appeal at all. It certainly appears that there is little substance in the allegation of a procedural irregularity arising out of this and I find that the Immigration Judge gave the Appellant every opportunity to apply for an adjournment if he considered that the viewing

of the DVD was essential before the Tribunal decided the outcome of the appeal.

Conclusion

21. The decision of the First Tier Tribunal was one that it was entitled to come to on the evidence presented and the submissions made. I find that the Immigration Judge carefully considered the evidence presented before him in a lengthy and detailed determination and reached clear fact findings which have not been the subject of effective criticism on appeal. In the circumstances, there is no material error of law in the decision of the First Tier Tribunal.

Decision

The decision of the First Tier Tribunal does not contain a material error of law such that it requires to be set aside.

Accordingly, the decision of the First Tier Tribunal to dismiss the appeal under the Immigration Rules and on human rights grounds stands. The present appeal is therefore dismissed.

No anonymity direction is made.

Signed W E Hanbury Dated this 22nd day of August 2014

Judge of the Upper Tribunal