Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/09854/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decisions & Reasons Promulgated**
On 10th December 2014	**On 2nd January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR JEROME DEKUM
(NO ANONYMITY DIRECTION)

Respondent

Representation:

For the Appellant: Mr P Duffy, Home Office Presenting Officer
For the Respondent: Mr M Biggs, Counsel instructed by K C Law Chambers Solicitors

DECISION AND REASONS

1. The respondent Mr Jerome Dekum is stateless. His date of birth is 15 August 1973. I will refer to him as the appellant as he was before the First-tier Tribunal.

2. On 1 September 2006 the appellant made an application for indefinite leave to remain in the United Kingdom under Article 8 of the 1950 Convention on Human Rights. The application was refused by the Secretary of State in a decision of 3 February 2014. Accompanying that decision was a decision to remove the appellant of the same date.

3. The appellant's background is that he entered the UK in January 2001. On 26 January 2006 the Secretary of State served him with an IS151A. On 28 October 2013 his representatives were sent an immigration status questionnaire which the appellant completed and returned to the Secretary of State on 14 November 2013. The Secretary of State concluded that the evidence did not show sufficiently compelling or compassionate circumstances that would justify granting leave to the appellant his application was refused under Appendix FM and paragraph 276ADE of the Immigration Rules. It was not considered that there were exceptional circumstances to grant the appellant leave outside of the Immigration Rules.

4. The appellant appealed against the decision of the Secretary of State and his appeal came before Judge of the First-tier Tribunal Tipping on 10 September 2014. The appellant attended the hearing and gave evidence and his appeal was allowed under Article 8 of the 1950 Convention on Human Rights in a determination that was promulgated on 25 September 2014.

5. The Secretary of State was granted permission to appeal in a decision by First-tier Tribunal Judge TRP Hollingworth in a decision of 11 November 2014. Thus the matter came before me.

The Decision of the First-tier Tribunal

6. The Judge's findings are between paragraph 17 and 23 of the determination which read as follows:-

> 17. In my view, the flaws in the appellant's evidence do not undermine the credibility of the central events on which his claim relies. I find, on a balance of probabilities, that the appellant was born and brought up as he claims, and was rendered stateless in 2001 by the French authorities. As Mr Ojuade submits in his skeleton argument, it is clear from the reasons for refusal letter that the respondent was (as were the French authorities) unable to identify a country to which the appellant might be removed. The reference to India on page 4 of the letter is evidently a "cut-and-paste" error. This reinforces my conclusion that he is to be regarded as stateless, as defined in Article 1(1) of the 1954 Convention, that is, a person who is not considered as a national by any state under the operation of its law.

18. That being the case, the appellant is entitled under Article 28 of the Convention to the issue to him of a United Kingdom travel document, and I allow his appeal on this ground to that extent.

19. I nevertheless turn to considering his appeal on Article 8 grounds. It is not claimed that the appellant meets any of the Article 8 requirements now contained in Appendix FM and paragraph 276ADE of HC395. I therefore assess the appellant's Article 8 claim under the relevant jurisprudence, including the decisions in **EB (Kosovo)**, **Beoku-Betts**, and **Razgar**, considering whether the appellant's claim discloses any relevant exceptional circumstance warranting the grant to him of leave outside the rules. An assessment of this claim requires me to strike the balance between the public interest including the enforcement of a fair and firm system of immigration control and the appellant's Article 8 rights. I have kept in mind the provisions of section 117B of the Nationality, Immigration and Asylum Act 2002 as inserted by section 19 of the Immigration Act 2014.

20. The appellant does not claim to enjoy a family life in the United Kingdom. As to his private life here, I have described above the central events on which his claim relies and accepted the overall credibility of his account. With these in mind, I address the questions posed in **Razgar**. It is clear that the appellant has established a significant private life here since his last arrival in the United Kingdom in the autumn of 2001 some 13 years ago. He has throughout that period worked and earned his living, first as an employee, but more recently on a self-employed basis, latterly through the medium of his company. He is the owner of a property in Manchester. He speaks English, giving his evidence at the hearing in that language. I accept that to refuse him leave to remain would interfere with the private life that he has established here, and, given the low threshold set by the courts, that this interference would be of a gravity such as to engage Article 8. If my conclusion above as to the appellant's statelessness claim were wrong, the interference would be in accordance with the law. The appellant otherwise has no right of appeal under the immigration rules.

21. With these considerations in mind, I turn to the final **Razgar** question, that relating to proportionality. The starting point is the significant length of time that the appellant has spent here, some 13 years as at the date of the hearing. It seems to me that it is in part the unconscionable delay of over 7 years in the respondent's coming to a decision about his claim that has left the appellant with little choice but to establish his private life here, and that this is a significant factor to be put in the appellant's side of the balance. The appellant owns property and a business here. He has always been financially independent and it is not claimed that he represents a burden on state funds. That he is ostensibly without another country of refuge also seems to me to be a significant additional factor. By contrast, it

is difficult to identify any public interest that might be served by refusing the appellant leave to remain, apart from a formal adherence to the immigration rules.

22. The balance to be struck turns on the circumstances of each claim, taken in the round. For the reasons given above, I find that the appellant's circumstances are exceptional and outweigh any public interest in refusing him leave to remain. Such refusal would accordingly be a disproportionate breach of his Article 8 rights.

23. The appeal on Article 8 ground is allowed.

The Grounds seeking Permission to Appeal and Oral Submissions

7. The grounds of appeal argue that the Judge misdirected himself in allowing the appeal under Article 8. He applied Article 8 without identifying compelling circumstances. The Judge failed to apply section 117B of the Nationality, Immigration and Asylum Act 2002. The Judge at [21] found that "by contrast, it is difficult to identify any public interest that might be served by refusing the appellant leave to remain, apart from a formal adherence to the Immigration Rules" and this finding is not consistent with section 117B.

8. The parties made oral submissions. Mr Duffy stated that there was no challenge to the finding that the appellant is stateless. In his view the appellant is either stateless or a French national (which would entitle him to rights under Directive 2004/38/EC). The thrust of the grounds is that there is no proper assessment under Article 8. The Judge should have considered the appeal under the Rules before going on to consider Article 8. Mr Duffy then conceded that had the Judge considered the matter under paragraph 276ADE she may have reached the same conclusion.

9. Mr Biggs referred me to **R (on the application of Esther Ebun Oludoyi and Ors) v SSHD (Article 8 – MM (Lebanon) and Nagre) IJR [2014] UKUT 00539 (IAC)**.

10. Mr Biggs submitted that section 117B largely assists the appellant in any event and there was nothing wrong with the Judge's assessment of Article 8 outside the Rules. The appellant has been here for a very long time and he has no connection with any other country.

Conclusions

11. The Judge accepted the appellant's evidence. The appellant was born on Sainte-Denis on the Island of Lareunion, a French Departement. He is a French citizen by birth. He travelled to mainland France with his father when he was aged 5 and they both went to live in Paris. The appellant subsequently lost contact with his father for a period of time. He was given a birth certificate by his father which he used to apply for a French

passport. In 1999 he used the passport to travel to the UK for a visit and then he went on to Germany where he worked for about two years. In July 2001 he was detained by the German authorities and then handed to the French police. He was subsequently declared stateless and given two days to leave France which he did. He came to the UK where he had a girlfriend and on 1 September 2006 he submitted an application for leave to remain here. The French authorities confiscated his French passport because his birth certificate was false.

12. It appears that the appellant through his representative at the hearing before the First-tier Tribunal conceded that he did not meet the requirements of the Immigration Rules including paragraph 276ADE. This in my view was a surprising concession to have been made considering the length of time that the appellant had been in the UK and his previous history. However, in these circumstances it was not open on the Judge to go behind that concession and the Judge was entitled to go onto to consider Article 8 outside of the Rules. This is consistent with recent jurisprudence on the issue

13. The Judge properly directed herself in relation to section 117B (see paragraph 19) and properly considered the public interest. There is nothing in the finding at paragraph 21 of the determination which is at odds with section 117B. The appellant is stateless and has been here for a significant period of time. I agree with Mr Duffy that had the Judge considered the appeal under paragraph 276ADE it is likely that the appeal would have been successful in any event. Although the appellant's stay here has been precarious there was a significant delay in processing his application. In my view the grounds do not disclose an error of law in the determination. In any event if the Judge fell into error it not material. Mr Duffy conceded that paragraph 276ADE would probably avail the appellant and I agree with him.

14. There is no material error of law and the decision of the Judge to allow the appeal under Article 8 is maintained.

Signed Joanna McWilliam Date 2 January 2014

Deputy Upper Tribunal Judge McWilliam