Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/33482/2014

THE IMMIGRATION ACTS

Heard at Field House, London	**Decision & Reasons Promulgated**
On 9th September 2015	**On 30th September 2015**

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

MR RONNIE ABOAGYE POKU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Brown, of Counsel instructed by Greenland Lawyers LLP
For the Respondent: Mr D Clark, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant Ronnie Aboagye Poku is a citizen of Ghana born 27th February 1984. He makes the following claims;

    - he was born in the United Kingdom and spent part of his childhood years here before being taken back to Ghana.

    - he re-entered the UK in 1999 and has remained here ever since.

2. The Respondent disputes both of those claims and asserts that the Appellant was born in Ghana and entered as a visitor only in 1999

remaining here periodically and returning to Ghana in between times. Therefore he has not lived here continuously, as claimed, since 1999.

3. On 13th February 2007 the Appellant, who was it is accepted, in the UK at that time, made application for indefinite leave to remain on the basis of his Article 8 ECHR rights. It was said that it would be a breach of those rights to require him to return to Ghana since he had lived in the UK since 1999. That application was refused and his subsequent appeal against the decision was dismissed by Judge Ross in a determination promulgated on 14th October 2008.

4. On 29th September 2012 the Appellant made a further application for leave to remain. This application was also refused by the Respondent, on 26th November 2013, with no right of appeal. The Appellant therefore issued Judicial Review proceedings and consequently the Respondent agreed to reconsider her decision. That reconsideration resulted in a further refusal of leave but this time with a right of appeal attached to it. The Appellant exercised his right to appeal and this is the decision which came before FtT Judge Lawrence.

5. The First-tier Tribunal Judge dismissed the appeal. The Appellant sought and was granted permission to appeal to the UT. Thus the matter comes before me to determine, initially, whether the First-Tier Tribunal Judge's decision contains an error of law requiring it to be set aside and remade.

UT Hearing – Error of Law

6. The starting point, in any decision on this Appellant's case, has to be to make clear findings on his claimed history. I noted earlier the Appellant makes two significant claims;

   (i) he entered the UK in 1999 and has remained since;

   (ii) he was born in the UK and spent part of his childhood here (UK birth certificate produced).

   It was therefore incumbent upon the First-tier Tribunal to assess the Appellant's history and make clear reasoned findings of fact on those two claims. Those findings of fact would then of course in turn, impact upon whether or not the Appellant meets the relevant Immigration Rules and/or effect the proportionality test in Article 8. I find the FtT's fact finding unclear and therefore lacking in reasons for its conclusions. I say this for the following reasons.

7. At [11] and [12] the FtT considers the birth certificate provided by the Appellant. The Judge acknowledges that the Respondent challenged the birth certificate goes on to say,

   > "…It is trite law to assert the legal burden lies with the appellant from state (sic) to finish. However, when the respondent challenges an assertion made by the appellant the respondent bears the evidential, not legal-that remains

> with the appellant from start to finish-burden to support her challenge. In the instant she has chosen to rely on assertions but not evidence. I find in the absence of proper and lawful challenge, the appellant was indeed born in the UK as he asserts."

It is hard to follow what the FtT's reasoning is here. The challenge to the birth certificate raised by the Respondent was in the context of the fact that the Respondent had before her evidence in the form of the Appellant's "genuine" Ghanaian passport which clearly showed him to have been born in Ghana. I am satisfied the Judge failed to factor in, what is clearly a relevant piece of evidence when reaching his conclusion above.

8. So far as the core issue of whether the Appellant has been in the UK since 1999 is concerned, I find that at [13] the Judge appears to doubt that the Appellant entered the UK as far back as 1999 but then announced at the close of the hearing that he was satisfied that the evidence suggested that the Appellant had been in the UK since entering in 23rd October 1999. However not content with doing that he went on to record in his determination that he had made a premature finding in that regard. He then made a finding that the Appellant had not been continuously in the UK since 1999 but instead had been here only since September 2005. Again his reasoning for that finding and his change of mind is unclear.

9. Likewise I find there are insufficient reasons given for stating at [19]

> "…There is no clear evidence as to when he returned to Ghana but he must have been in Ghana when he made the 2002 six month visit visa."

There is no identification of what evidence the Judge draws upon to form that conclusion.

10. It is of relevance that the Judge makes no reference whatsoever to the decision of IJ Ross promulgated on 14th October 2008. IJ Ross's decision forms part of the Respondent's case; it contains clear findings of fact. Whilst the FtT Judge has the undoubted right to depart from those findings, he must nevertheless make it clear why he chooses to do so and what evidence it is that causes him to follow a different course.

11. Finally I return to the point made at paragraph 8 of my decision. At [19] the Judge said that he indicated at the end of the hearing that the evidence suggested that the Appellant had been in the UK since October 1999. I am satisfied that in this case, the consequence of this declaration amounted to a procedural unfairness. Miss Brown who appeared before me at the UT also appeared in the FtT. She indicated that having received that concession, she curtailed her submissions and therefore did not address evidence which may well have led the Judge to find differently. I accept that submission and I am satisfied that this amounts to a clear procedural unfairness.

12. When I look at all these matters cumulatively I find, despite Mr Clark's valiant attempt to urge otherwise, that the decision of the FtT is unsustainable. It must be set aside for legal error.

13. Because of the lack of clear cogent fact finding and because I find there was procedural unfairness before the FtT, I consider that the appropriate course in this case must be to remit the matter to that tribunal for a full re-hearing. The decision of the FtT is set aside in its entirety; nothing can be preserved from it. New full clear findings of fact will need to be made.

Decision

14. The decision of the FtT promulgated on 17th March 2015 is set aside. The appeal is remitted to the First-tier Tribunal (not Judge NMK Lawrence) for that Tribunal to re-make the decision.

No anonymity direction is made.

Signature **Dated**
Judge of the Upper Tribunal