



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/41965/2013
IA/42799/2013
IA/42806/2013
IA/42810/2013
IA/42826/2013

THE IMMIGRATION ACTS

Heard at Field House
On 26 June 2015

Decision and Reasons
On 9 July 2015

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL KAMARA

Between

**MR OSB
MRS LTO
MASTER FAOB
MISS HIAB
MASTER FB**

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Anifowoshe, counsel instructed by Apex Solicitors
For the Respondent: Ms A Fijiwala, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the determination promulgated on 9 October 2014, of

First-tier Tribunal Judge Woolf.

2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellants. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so as three of the appellants in this case are minors.

Background

3. The first appellant claimed to have last entered the United Kingdom 21 April 1993 in possession of a visit visa valid for 6 months. The second appellant entered the United Kingdom in February 2001. The first appellant applied for indefinite leave to remain on the basis of long residence on 28 November 2005. The remaining appellants, who are the first appellant's partner and minor children, were included in that application. The Secretary of State did not accept the extent of the first appellant's claimed residence and concluded that he was an illegal entrant who could only demonstrate 10 years unlawful residence between 2003 and 25 September 2013, the date of the decision. The respondent considered that the first appellant could not meet the requirements of the Immigration Rules in relation to his family because his wife and children were all Nigerian nationals who could be expected to return to Nigeria together as a family unit. Furthermore, it was not accepted that the first appellant had severed all ties with Nigeria. The respondent did not accept that her 8 year delay in considering the application in question amounted to a compelling factor. The grounds of appeal stressed the respondent's alleged failure to take into consideration the best interests of the minor appellants.
4. During the course of the hearing before the First-tier Tribunal which took place on 23 September 2014, the respondent's representative relied on Edgehill v SSHD [2014] EWCA 402 and conceded that the Rules set out in Appendix FM were not to form part of the FTTJ's consideration.
5. Judge Woolf found as follows:
 - a. The first appellant had not amassed 14 years residence in the United Kingdom.
 - b. The oral evidence of the first and second appellant as well as their witnesses lacked credibility.
 - c. The first and second appellants had not lost all ties to Nigeria.
 - d. The minor appellants had no special needs and could adapt to life in Nigeria.

- e. It was not unduly harsh for the children to leave the United Kingdom with their parents.
- f. The respondent unreasonably delayed making a decision, however the application was without merit from the outset.

Error of law

6. The renewed grounds of appeal submit:
 1. The Designated Judge who previously refused permission made a material mistake of law and fact in not appreciating that the letter from the mosque referred to in the grounds formed part of the respondent's bundle which was before the FTTJ at the hearing.
 2. The FTTJ failed to consider and give due weight to the letter from the General Secretary of a mosque dated 6 October 2013.
 3. The FTTJ ought to have considered that the respondent's delay had resulted in the appellants' family lives being integrated into the United Kingdom. In particular, the fourth appellant was now aged 9.
7. Permission was granted solely in relation to the arguable failure of the FTTJ to consider the letter from the mosque and consequent failure to give adequate reasons for her findings on a material matter.
8. The respondent sent a Rule 24 response to the grant of permission to appeal. In essence, the respondent opposed the appellants' appeal, albeit it was accepted that the document from the mosque was in fact contained in the respondent's bundle before the FTTJ. It was argued that owing to the judgment in Singh v SSHD [2015] EWCA Civ 74, the post 9 July 2012 Immigration Rules applied and therefore the appellant would not have been able to benefit from the 14 year Rule even if the letter from the mosque was accepted.
9. At the hearing before me, Ms Anifowoshe accepted that the issues had been narrowed by UTJ Goldstein who granted leave; in that the only issue at large was in relation to the letter from the mosque. She accepted that the new Rules applied and therefore the appellant was required to show that he had been continuously residing in the United Kingdom for 20 years, which she considered he had demonstrated.
10. For her part, Ms Fijiwala relied on the points made in the Rule 24 response. In addition, she drew my attention to an apparent discrepancy in the letter from the mosque. Ms Anifowoshe attempted to respond to that criticism in her closing submissions. I should add that Ms Anifowoshe referred to the considerable delay in the respondent reaching a decision in this case as well as the fact that the fourth appellant is due to turn 10 years old on 28 June 2005.

She accepted that neither of these issues was relevant to the grounds upon which permission to appeal had been granted.

11. As was agreed by the representatives, owing to the fact that the respondent's decision was made on 25 October 2013, that is outside the 2 month window identified by the Court of Appeal in Singh, the new Rules apply and therefore the first appellant is required to show that he meets the requirement of 20 years continuous residence in the United Kingdom. In any event, it is the first appellant's case that he arrived in the United Kingdom on 21 April 1993 and had this been accepted, he would have completed 20 years residence as of the date of the respondent's decision.
12. The FTTJ, at paragraph 16 of the determination, noted the appellant's claim that *"he has been actively involved with his Mosque, which he joined in 1999."* However, at paragraph 41, she remarks that *"there is no evidence from the Mosque to corroborate the first appellant's claim that (he) started attending there in 1999."* That was incorrect. Enclosed with the notice of appeal as well as the respondent's bundle of evidence, was a copy of a letter from Assalatur-Rahman Islamic Association UK dated 6 October 2013 and signed by the General Secretary, Akeem Rilwan-Adagun, which stated that both the first and second appellants had been *"attending service and praying in our mosque since 1999."*
13. Notwithstanding the FTTJ's error in stating that there had been no letter from the mosque and also in failing to have regard to the letter from the mosque, I find that this did not amount to a material error of law for the following reasons.
14. The said letter from the mosque said, unequivocally, that both the first and second appellants had attended services and prayed at the mosque since 1999. However it is the second appellant's case that she did not arrive in the United Kingdom until 2001. Ms Anifowoshe had little to say in relation to this clear discrepancy. I note that the mosque letter concerns both the first and second appellants equally and I do not accept that the contents relate only to the first appellant. It is therefore unlikely that the FTTJ would have attached much weight to that item had she considered it.
15. Furthermore, at paragraph 41 of the determination, the FTTJ further remarks as follows;

"... there is absolutely nothing in documentary form for a period spanning 10 years between the appellant's claimed date of entry and 2003 undermines the credibility of his claim. There is not a bill, not a photograph, not a letter or any document in support. I regard the complete absence of other documentary evidence of an unofficial nature, an official nature in what ever identity the appellant claims he was using before he began to use his true one, undermines the credibility of his claims to be continuously resident since 1993."

16. The letter from the mosque is not a contemporaneous document dating from the 10 year period commencing 1993. It is dated 2013 and had the FTTJ considered it, it could not be said that it would have made a material difference to her conclusions as to the length of the first appellant's residence.
17. Even if the FTTJ had accepted the mosque letter as evidence of the first appellant's residence since 1999, this would have taken him only part of the way to satisfying the 20 years residence requirement. A period of residence from 1999 until the date of the hearing would amount to only 15 years residence. In addition, Ms Anifowoshe did not argue that any finding that the first appellant had been resident in the United Kingdom since 1999, that is for an additional 4 years, would have tipped the balance, in the proportionality assessment, in the appellants' favour.
18. In these circumstances I am satisfied that there are no errors of law in the FTTJ's determination such that the decision ought to be set aside to be remade.

Conclusions

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Signed:

Date: 28 June 2015

Deputy Upper Tribunal Judge Kamara