Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/13516/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 10th January 2018	**On 02 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

JOHN ELIGIUS LILOKA MAHUNDI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Mahundi, in person
For the Respondent: Mrs. N Wilcocks Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Tanzania who appealed to the First-tier Tribunal ("F*t*T") against a decision of the respondent dated 2nd December 2015 refusing his application for leave to remain in the UK on long residence and Article 8 grounds. His appeal was dismissed for the reasons set out in the decision of First-tier Tribunal ("F*t*T") Judge Hodgkinson promulgated on 23rd March 2017.

2. Permission to appeal was granted on 5th October 2017 by Deputy Upper Tribunal Judge Chapman. The matter comes before me to determine whether the decision of the F*t*T contains a material error of law, and if so, to remake the decision. At the end of the hearing before me, I informed the appellant that I dismiss the appeal. I provided my reasons in brief, and I informed the parties that a full written decision would follow. This I now do.

The decision of the F*t*T Judge

3. The background to the appellant's appeal and his immigration history is set out at paragraphs [1] to [8] of the Judge's decision. At paragraph [9] of the decision, the F*t*T Judge sets out the basis upon which the claim was refused by the respondent. The Judge records, at paragraphs [11] to [20] of the decision, the appellant's case and the evidence received by the Tribunal. The Judge's findings and conclusions are to be found at paragraphs [23] to [38] of the decision.

4. The appellant's case is that having returned to the United Kingdom on 3rd February 1980, he has never left the United Kingdom. The Judge records at paragraph [23] that it appears to be common ground that the appellant returned to the United Kingdom as a student on 3rd February 1980. The issue in the appeal was whether the appellant has remained in the United Kingdom continuously, since then. The respondent's case, as summarised in paragraph [23], is that the appellant has produced inadequate evidence to establish his claim that he has remained continuously in the United Kingdom, since February 1980. The respondent did not therefore accept that the appellant has established 14 years continuous residence for the purposes of paragraph 276B of the immigration rules, or 20 years continuous residence for the purposes of paragraph 276ADE of the rules. The Judge records at paragraph [24] of the decision that the appellant acknowledged:

> ".. that he did not have any documentary evidence of relevance to his places of residence such as, for example, evidence of rental payments paid or tenancy agreements. He added that he had worked "on and off" but had essentially lived "hand-to-mouth and that he had no National Insurance number. He acknowledged that he also had no documentary evidence relating to any employments undertaken by him at any stage."

5. At paragraphs [26] to [31], the Judge addressed the documentary evidence relied upon by the appellant in support of the appeal. At paragraph [32], the Judge states:

> "Thus, the available documentary evidence is extremely limited. None of the writers of the various letters referred to attended the hearing, in order to provide oral evidence, and, consequently, I have given their written evidence no material weight. The appellant claims to have friends in the United Kingdom who are willing to support him both emotionally and financially but, bearing in mind that claim, I find it surprising, and damaging to his credibility, that not one of those friends has attended to provide any oral evidence; neither have any of the priests or organisers of the organisations at which the appellant claims to have undertaken charitable activities over the years."

6. The Judge accepted, at paragraph [35] that the appellant was in the United Kingdom in October 2010, but at paragraph [36] concluded that the appellant has failed to establish that he has remained in the United Kingdom continuously since 1980. The Judge states:

> "… he has failed to establish precisely when he has been in the United Kingdom during the intervening period. Consequently, I find that he cannot satisfy the requirements for long residence set out in paragraph 276B and 276ADE of the Rules, as he has not established, 14 years' continuous residence in the United Kingdom, or 20 years continuous residence respectively. He does not claim to have established 10 years lawful residence with reference to paragraph 276B. In the presenting circumstances, and bearing in mind my findings of fact, I conclude that the appellant also cannot establish that he meets the requirements of paragraph 276ADE(1)(vi)."

7. As to an Article 8 claim outside of the rules, the Judge states at paragraph [38]:

> "Based upon my findings of fact, and even allowing for the respondent's delay in making a decision following the appellant's 2010 application, I am satisfied that there are no circumstances which could conceivably warrant my concluding that the respondent's decision is

> other than an entirely proportionate one with reference to Article 8, there being no current challenge to the lawfulness of that decision. For the sake of completeness, I would add that, bearing in mind my findings of fact, the appellant has failed to establish that his private life in the United Kingdom is of the duration or quality claimed by him. He does not claim to enjoy a family life in the United Kingdom in the context of Article 8 and, even if he did, there is no evidence to support such in any event."

The appeal before me

8. At the outset of the hearing before me, as the appellant was unrepresented, I explained the procedure that I would adopt, to him. I informed the appellant that the appeal before me, is not a re-hearing of the appeal in the same way as the appeal he had previously attended, before the F*t*T. I explained to the appellant that I would first determine whether the decision of the F*t*T contains a material error of law, and if so, I would hear further submissions to assist me remake the decision. Before hearing submissions I ensured that the appellant had a copy of the decision of the F*t*T Judge, a copy of his grounds of appeal, and a copy of the order granting permission to appeal.

9. The appellant claims that the judge misdirected himself at paragraphs [10(3)] and [10(4)] of the decision. The appellant submits that he has lived in the United Kingdom for over 37 years and has devoted his life to charity work. He submits that it is his choice not to have established a family life and on any view, when an individual has lived in a country for over 37 years, he is bound to have established a private life, even though he was unable to provide sufficient evidence. The appellant claims that the Judge fell into error when he noted at paragraph [33] of his decision, that there is no correspondence from the Tanzanian authorities to confirm that the appellant has not been issued with another Tanzanian passport. The appellant claims that he should have been given the opportunity to provide the Tribunal with confirmation from the Tanzanian authorities, that he has not been issued with any other passport, and in any event, as he is subject to immigration control, the respondent must have had records of his entry into, and exit from the United Kingdom.

10. Before me, the appellant maintained that he has been in the United Kingdom since 1980, and that he had presented evidence before the F*t*T Judge in support of his appeal. He maintained that he has not left the United Kingdom since 1980. He confirmed that, as set out at paragraph [33] of the decision, there was no evidence before the F*t*T Judge from the Tanzanian authorities that the appellant had not been issued with another passport.

11. It is now well established that what is required in a decision is that the reasons provided must give sufficient detail to show the parties and the appellate Tribunal, the principles upon which the lower Tribunal has acted, and the reasons that led it to its decision, so that they are able to understand why it reached its decision.

12. At paragraphs [10(3)] and [10(4)] of the decision, the F*t*T Judge is not reaching any conclusion upon the appeal, but the Judge sets out a summary of the respondent's decision dated 2nd December 2015. The Judge has not misdirected himself as to the claim being made by the appellant.

13. In my judgment, a careful reading of the decision of the F*t*T Judge demonstrates that the F*t*T Judge carefully considered all of the evidence relied upon by the appellant to support his claimed presence in the UK since February 1980. The evidence was, as the Judge recorded at paragraph [32], extremely limited, and none of the authors of the various letters that the appellant relied upon, attended the hearing to provide oral evidence. There was a dearth of evidence regarding the appellant's residence, employment, or presence in the United Kingdom between 1980 and 2010. Having carefully considered the decision of the F*t*T Judge, I am entirely satisfied that it was open to the Judge to accept that the appellant was in the United Kingdom in October 2010, and that there was evidence placing the appellant in the UK, in the latter part of 2013. The immigration rules however require 'continuous residence' in the United Kingdom, and it

was in my judgement open to the Judge to conclude that the requirements of the immigration rules cannot be met. The appellant has maintained throughout that he has remained in the United Kingdom since February 1980. That claim was carefully considered, and the Judge rejected that account for the reasons given in the decision. The matters relied upon by the appellant amount to nothing more than a disagreement with the findings of the Judge, that were properly open to him on the evidence.

14. As to the Article 8 claim outside the rules, the Judge properly records at paragraph [38] of his decision that the appellant does not claim to enjoy a family life in the United Kingdom. The respondent noted in the decision dated 2nd December 2015 that the appellant had developed a private life in the UK without any form of valid leave. The Judge proceeds upon the basis that the appellant has established a private life in the United Kingdom but concluded that the appellant has failed to establish that his private life in the United Kingdom is of the duration or quality claimed by him. Although not referred to by the Judge, the Tribunal must "have regard" to the considerations set out in section 117B of the Nationality, Immigration and Asylum Act 2002 (section 117A). Section 117B(4)(a) provides that little weight should be given to a private life that is established by a person at a time when the person is in the United Kingdom unlawfully. In my judgement it was open to the judge to conclude that there are no circumstances which could conceivably warrant a conclusion that the respondent decision is other than an entirely proportionate one, with reference to Article 8.

15. I am satisfied that there is no material error in the decision of the F*t*T Judge and I dismiss the appeal.

Notice of Decision

18. The appeal is dismissed.

Signed Date 12th March 2018

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and there can be no fee award.

Signed Date 12th March 2018

Deputy Upper Tribunal Judge Mandalia