



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number HU/22878/2016

THE IMMIGRATION ACTS

Heard at Field House
On 23rd July 2018

Decision and Reasons Promulgated
On 30th July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

JUDE OJEMEN
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Pipi (Counsel, instructed by Fairview Solicitors Ltd)
For the Respondent: Ms K Pal (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant's application for leave to remain on the basis of continuous residence from 1995 was rejected by the Secretary of State. The Appellant's appeal was heard by First-tier Tribunal Judge Gibbs at Hatton Cross on the 21st of February 2018. The decision in the appeal was promulgated on the 22nd of March 2018.
2. The Judge rejected the Appellant's claims with regard to his length of residence given the lack of supporting evidence discussed in paragraphs 7 to 11. However the Judge in paragraph 12 stated "In the face of Ms Hunjan's comprehensive cross-examination I find that the Appellant appeared credible." The Judge then went to find that the absence of reliable corroborative documentary evidence led the Judge to find that the Appellant had not discharged the burden of proof.
3. The grounds complain that the Judge appeared to have dismissed the appeal on the basis that the Appellant had not provided corroborative evidence which is not a legal requirement and had accepted the Appellant as credible and had not given reasons why removal was not in breach of

article 8. Permission was granted with First-tier Tribunal Judge Hollingworth also referring to the contradiction in paragraph 12.

4. Corroboration is not a legal requirement but a Judge is perfectly entitled to have regard to supporting evidence that might reasonably be expected but which is not provided and for which there is no adequate explanation. This is a feature that commonly arises in long residence cases and the reasons given by the Judge in paragraphs 7 to 11 would have sufficed but for the contents of paragraph 12.
5. Either the Appellant is credible in which case he had discharged the burden of proof or the evidence is insufficient to discharge the burden of proof. It is not possible to reconcile the findings in paragraphs 7 to 11 with the observation in paragraph 12. It is an unhappy choice of words but a formula that has the effect of undermining the previous reasoning provided. In the circumstances I regret that I find that the decision cannot stand and that it has to be set aside and remitted to the First-tier Tribunal to be heard by a Judge other than Judge Gibbs. Obviously the hearing will be de novo, with no findings preserved.

CONCLUSIONS

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision.

The appeal is remitted to the First-tier Tribunal at Hatton Cross to be heard by a First-tier Tribunal Judge other than Judge Gibbs.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

In setting aside the decision I make no fee award which remains a matter for the First-tier Tribunal at the conclusion of the remitted hearing.

Signed:



Deputy Judge of the Upper Tribunal (IAC)

Dated: 23rd July 2018