



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/34925/2015

THE IMMIGRATION ACTS

Heard at Field House  
On 25 September 2018

Decision & Reasons Promulgated  
On 11 October 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

MAURICE SANTOS  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person  
For the Respondent: Ms. A. Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

1. In a decision promulgated on 22 May 2018 I set aside the decision of the First-tier Tribunal. The appeal came before me to be remade.
2. I made the following directions at [38] and [39] of the error of law decision:

“Given Mr Jarvis’ submission that the Respondent was pursuing further enquiries with the Angolan Embassy, and given the relevance of this to the appeal, if the Respondent has any evidence which casts doubt on the evidence from the Angolan Embassy that the Appellant cannot prove his citizenship without supporting

documents, she is to provide any such evidence, and any submissions in relation to this evidence, 14 days in advance of the resumed hearing. [38]

The Respondent is also to make clear her position regarding the DRC, given that she has accepted the Appellant's claim to be a citizen of Angola." [39]

3. Nothing was provided to the Tribunal by the Respondent in advance of the hearing.
4. At the outset of the hearing I asked Ms. Fijiwala whether she had anything further to provide. In relation to [38] she said that she had chased this issue in the week prior to the hearing. Nothing had been received from the Angolan Embassy and no timescale had been given as to when a response would be received. There was no indication of when this issue had first been pursued following the previous hearing, and there was no documentary evidence to show when any enquiries had been made. I therefore find that no evidence has been provided by the Respondent to cast doubt on the evidence from the Angolan Embassy that the Appellant cannot prove his citizenship without supporting documents.
5. In relation to [39] Ms. Fijiwala stated that, as the Respondent had accepted that the Appellant was from Angola, the DRC was not relevant. There was no issue of the Appellant's return to the DRC.
6. The error of law decision was promulgated on 22 May 2018. The appeal came before me on 25 September 2018, some four months later. There was no indication as to when the matter set out at [38] had been raised with the Angolan Embassy. There was no documentary evidence before me to confirm that the Respondent was pursuing further enquiries. This issue has been ongoing since January 2017, when directions were made in the First-tier Tribunal relating to the Respondent's discussions with the Angolan Embassy. I set out in the error of law decision the Respondent's failure to comply with the directions of the First-tier Tribunal [13] to [19]. I considered that the interests of justice would not be served by delaying consideration of the Appellant's appeal further, for an indeterminate period. No adjournment was requested by Ms. Fijiwala.
7. At the hearing having explained the position to the Appellant, I indicated to him that I would be allowing the appeal given the position relating to his inability to return to Angola. My full reasons are set out below.

### **Remaking**

8. The burden of proof lies on the Appellant to show that the Respondent's decision is a breach of his rights to a family and private life under Article 8 ECHR. The standard of proof is the balance of probabilities.

### The Respondent's case

9. The Appellant applied for leave to remain as a spouse. The reasons for refusal letter is dated 4 December 2015. The Respondent considered that the Appellant met the suitability and eligibility requirements for leave to remain as a spouse under Appendix FM of the immigration rules. The Respondent then proceeded to consider paragraph EX.1 ([11] onwards). At [12] the Respondent stated that the Appellant did not meet the requirements of paragraph EX.1(b) as he had not supplied sufficient evidence to support his claim that his partner was recognised as disabled. The Respondent considered this further at [13] and [14]. At [15] family ties with the Appellant's partner's daughter were considered. The Respondent considered that the Appellant did not meet Appendix FM.
10. The Respondent then considered the Appellant's private life. There was consideration of his nationality at [21], but that there was no consideration of the Appellant's ability to return to Angola, although the interview carried out with the Angolan Embassy, which the Respondent had arranged, had taken place in February 2015. The Respondent considered that the Appellant did not meet the requirements of paragraph 276ADE(1)(vi).
11. Exceptional circumstances were considered at [30] onwards, but only with reference to the Appellant's wife.

### Findings and conclusions

12. As confirmed by Ms. Fijiwala on behalf of the Respondent, the Appellant has been accepted as being Angolan, so the issue is whether he is able to return there. The Respondent is not submitting that he can return to any other country.
13. I find that the evidence before me from the Angolan Embassy shows that the Appellant cannot prove his citizenship of Angola as he has no documents. I therefore find that his Angolan nationality cannot be confirmed. The letter from the Angolan Embassy dated 15 May 2017 to the Appellant's representatives states:  
  
"As regards to Mr Santos' application for an Angolan Passport or Travel Document, we are sorry to inform that we are unable to confirm his Angolan nationality since there are no supporting documents."
14. As I found in the error of law decision [24], it is clear from the interview synopsis provided by the Angolan Embassy that they were aware that the Appellant had stated that he was born in Angola, and that his father was an Angolan citizen. However the letter is clear that, without supporting documents, his nationality cannot be confirmed. As set out above, there is no evidence from the Respondent to cast doubt on this. The interview in February 2015 was set up by the Respondent who was seeking to remove the Appellant to Angola. On that occasion the Respondent failed to obtain any documents from the Angolan Embassy in order to

facilitate the Appellant's removal. I therefore find that the Appellant cannot confirm his Angolan citizenship and cannot obtain documents which will enable him to return to Angola.

### Immigration rules

15. In order to meet paragraph EX.1(b) the Appellant must show that there are insurmountable obstacles to family life with his spouse continuing outside the United Kingdom. Paragraph EX.2. defines "insurmountable obstacles" as "the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner."
16. I find that the fact that the Appellant cannot prove his Angolan citizenship, and therefore cannot obtain entry to Angola, amounts to an insurmountable obstacle to family life continuing in Angola. I find that he has provided evidence which shows that this obstacle cannot be overcome given that he has no supporting documents which could show that he is entitled to Angolan citizenship. It is not submitted that he should be able to continue family life anywhere else, in particular the DRC or Kenya and, without travel documents, he would be unable to travel in any event. I find that the Appellant meets the requirements of paragraph EX.1 of Appendix FM.
17. Further I find that the inability to prove his citizenship is a "very significant obstacle" to his integration into Angola, and therefore he meets the requirements of paragraph 276ADE(1)(vi) in relation to his private life.

### Article 8 outside the rules

18. I have considered the Appellant's appeal outside the Immigration Rules in accordance with the case of Razgar [2004] UKHL 27. As was accepted by the Respondent, I find that the Appellant and his wife are in a genuine and subsisting relationship. I find that the Appellant and his wife have a family life sufficient to engage the operation of Article 8. I find the decision would interfere with that.
19. Continuing the steps set out in Razgar, I find that the proposed interference would be in accordance with the law, as being a regular immigration decision taken by UKBA in accordance with the immigration rules. In terms of proportionality, the Tribunal has to strike a fair balance between the rights of the individual and the interests of the community. The public interest in this case is the preservation of orderly and fair immigration control in the interests of all citizens. Maintaining the integrity of the immigration rules is self-evidently a very important public interest. In practice, this will usually trump the qualified rights of the individual, unless the level of interference is very significant. I find that in this case, the level of interference would be significant and that it would not be proportionate.
20. In assessing the public interest I have taken into account all of my findings above in relation to the immigration rules. I have also taken into account section 117B of the

Nationality, Immigration and Asylum Act 2002. Section 117B(1) provides that the maintenance of effective immigration controls is in the public interest. I have found above that the Appellant meets the requirements for leave to remain as a spouse under Appendix FM of the immigration rules. I have also found that he meets paragraph 276ADE(1)(vi). There will therefore be no compromise to the maintenance of effective immigration control by allowing his appeal.

21. The Appellant speaks English (117B(1)). In relation to his financial situation I find, adopting the finding in the First-tier Tribunal that, were his immigration status to permit him, he would be likely to obtain some work (117B(3)).
22. I find that the Appellant has been in the United Kingdom for some nineteen years. Section 117B(4) provides that little weight should be given to a relationship with a qualifying partner formed when that person is in the United Kingdom unlawfully. However given the other factors in the Appellant's case, I find that more weight should be given to their relationship which cannot be enjoyed outside of the United Kingdom. Sections 117B(5) and 117B(6) are not relevant.
23. I have found above that the Appellant cannot obtain documents to prove his Angolan citizenship and therefore cannot return to Angola. It has not been submitted by the Respondent that he could be returned to any other country. I therefore find that family life can only be enjoyed in the United Kingdom.
24. Taking into account all of the above, I find that the balance comes down in favour of the Appellant. I find, in carrying out the balancing exercise required, that the Appellant has shown on the balance of probabilities that the decision is a breach of his rights, and those of his spouse, to a family and private life under Article 8 ECHR.

### **Notice of Decision**

25. The appeal is allowed on human rights grounds. The Appellant meets the requirements of Appendix FM and paragraph 276ADE(1) of the immigration rules.
26. No anonymity direction is made.

Signed

Date 6 October 2018

**Deputy Upper Tribunal Judge Chamberlain**

### **TO THE RESPONDENT** **FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award. The Respondent was aware of the problems faced by the Appellant in proving his Angolan citizenship having tried to remove him in 2015, and having set up an interview with the Angolan Embassy in order to facilitate this. However, he made no reference to these difficulties in the reasons for refusal letter. He then failed to

comply with the directions of the First-tier Tribunal. The Respondent claimed to be in ongoing discussions with the Angolan Embassy but provided no evidence of this, and no evidence to contradict the Embassy's advice that they could not issue a passport or travel documents. In the circumstances, I make a fee award for the entire fee paid, £140.

Signed

Date 6 October 2018

**Deputy Upper Tribunal Judge Chamberlain**