Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/03236/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 30 October 2019	**On 04 November 2019**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

MOUZAOUI KAMEL
(anonymity direction not made)
Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Respondent

Representation:

For the appellant: Mr M. Murphy, instructed by Inayat Solicitors
For the respondent: Ms S. Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 29 January 2019 to refuse a human right claim based on the private life requirement of 20 years' long residence under paragraph 276ADE(1)(iii) of the immigration rules.

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2. First-tier Tribunal Judge Nixon ("the judge") dismissed the appeal in a decision promulgated on 30 May 2019. She was satisfied that the appellant had been continuously resident in the UK since 2000 (a period of 18-19 years) [17]. The judge was not satisfied that the evidence relating to the appellant's period of residence from 1997-1999 was sufficient to show that he was continuously resident during that period. She made the following findings:

> "18. I am not satisfied however, even on the low standard of proof necessary, that he has shown that he has been in the UK continuously for 20 years or more as required by paragraph 276ADE(1)(iii). I have seen a letter from Rail Gourmet UK Ltd dated 22nd December 1997 that he had been working for them part time since March 1997 and I have seen some payslips from 1997, 1998 and 1999. As conceded by Mr Murphy there are some missing and indeed, doing the best I can from what I have seen, I am unable, doing the calculations from the amounts of taxable gross pay shown, to find that he has shown that he did not leave the country for any periods of time.
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> 19. The appellant has stated that he remained in the UK from the time of his arrival and did not leave. In the absence of supporting evidence to this effect, I am not prepared to take his word for it. It is clear that he is a man who has used dishonesty to enter the country under a false name and using a false passport and he has continued to work and register for free medical treatment using those false details. I find that such long lasting dishonesty has an adverse effect on his credibility, notwithstanding his plausible explanation for continuing with the deception, as he did not want to be found out. I have seen a short letter from Sofiane Merakchi dated 26th April 2017 stating that he has known the appellant from March 1997 but he did not attend the hearing. His letter does not state where they met, how often they saw each other and how long passed between meetings. I therefore cannot rely on this document to 'fill the gap' and show that the appellant remained in the UK. I find therefore that the appellant has failed to show that he meets the criteria of paragraph 276ADE(1)(iii)."

3. The judge went on to make findings with reference to paragraph 276ADE(1)(vi) of the immigration rules. She concluded that it might be difficult for him to re-establish himself in Algeria, but he continued to have linguistic, cultural and familial connections. She concluded that there would not be 'very significant obstacles' to his integration [20]. The judge then conducted a wider assessment of Article 8 outside the rules. She stated that the appellant had lived in the UK "for at least 17 years" and accepted that it was likely that he had established a private life in the UK. She accepted that removal in consequence of the decision would interfere with that private life but concluded that it would be proportionate having taken into account the public interest considerations in section 117B of the Nationality, Immigration and Asylum Act 2002 ("the NIAA 2002") [21].

4. The original grounds of appeal made general submissions but were not clearly particularised. At the hearing, Mr Murphy distilled the grounds into the following two points:

(i) The hearing was procedurally unfair because the judge failed to put the issue of whether the appellant had left the country in the period 1997-1999 to him at the hearing given that there was no Home Office Presenting Officer at the and that specific issue had not been raised in the decision letter.

(ii) The judge made inconsistent findings regarding the appellant's length of residence. At [17] she made a clear finding that he had been in the UK for a period of 18-19 years, but then only took into account 17 years of residence at [21] in assessing Article 8 outside the rules.

Decision and reasons

5. The first ground of appeal has no merit. The question of whether he had been continuously resident was not a new issue that needed to be put to the appellant in the absence of a Home Office Presenting Officer. The burden of proof was on the appellant to show that he had been continuously resident in the UK for a period of at least 20 years. The judge accepted that the combination of evidence, including evidence from a witness who attended the hearing, was sufficient to show that he had been continuously resident since 2000.

6. The judge considered the fact that there was some evidence to show that the appellant was working at some stages during the period from 1997-1999. It was open to her to note that the documentary evidence did not cover the period sufficiently well for her to be satisfied to the required standard of proof that he was continuously resident. She considered other evidence from a friend that might have supplemented the rather patchy evidence relating to his employment, but was entitled to conclude that little weight could be given to the letter from Sofiane Merakchi because he did not attend to give evidence and it contained little detail. Mr Murphy repeatedly argued that the judge failed to put to the appellant that he might have left the country during that period, but I do not agree that fairness required her to do so. The appellant's evidence was that he remained in the UK throughout the period. The judge gave adequate reasons to explain why she was not prepared to accept his oral evidence on face value. Those findings were unarguably open to her to make on the evidence given the appellant's long-standing use of false documents and deception [19]. The judge carried out the task of assessing whether the appellant had discharged the burden of proof. It is understandable that the appellant disagrees with the decision, but her findings were within a range of reasonable responses to the evidence. If the appellant obtains further and better evidence for the relevant period from 1997-1999 he can put it to the Secretary of State in a fresh application.

7. The second ground is equally unarguable. I accept that the judge's finding at [17] is clear and unambiguous. She was satisfied that the appellant had been continuously resident since 2000. When she conducted her

assessment outside the rules her finding that he had been resident for 17 years was inconsistent with her earlier finding. Mr Murphy sought to persuade me that inaccuracy of two years could make a material difference because the closer to 20 years' residence the appellant was, the more weight should be placed on his private life. He referred to what was said at [56] in *SSHD v SS (Congo)* [2015] EWCA Civ 387.

8. It is trite law that there is no principle of 'near miss' although I accept that in a human rights assessment the facts of each case must be evaluated properly and appropriate weight should be given to a person's length of residence and the strength of any ties that they have established during that time. However, it is important to note that the underlying immigration decisions in *SS (Congo)* were made at a time when the public interest factors contained in section 117B NIAA 2002 had not been introduced.

9. In this case, the judge was obliged to give little weight to the appellant's private life established at a time when he was remaining in the UK unlawfully. I was not referred to any evidence that showed that the difference between 17 years or 19 years residence would have made any material difference to the judge's overall conclusion. Either way, she considered the fact that the appellant had been resident in the UK for a significant period. She had found that his removal would interfere with his private life but was obliged by statute to give little weight to it in the balancing exercise given that the appellant had failed to produce sufficient evidence to show that he met the requirements of paragraph 276ADE(1)(iii) of the rules and there were no other compelling factors, such as family or children in the UK, that might render his removal disproportionate.

10. For the reasons given above I conclude that the First-tier Tribunal decision did not involve the making of an error on a point of law. The decision shall stand.

DECISION

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

Signed Date 30 October 2019
Upper Tribunal Judge Canavan