Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/00391/2019

THE IMMIGRATION ACTS

Remote Hearing by Skype	**Decision & Reasons Promulgated**
On 15th September 2020 and 2nd February 2021	**On 26th February 2021**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

MOURAD TALBI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S Akinbolu, Counsel instructed by Malik & Malik Solicitors
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant's appeal against the respondent's decision of 10th December 2018 to refuse his application for leave to remain in the UK on the basis of his private life and on Article 8 grounds, was dismissed by Judge Thapar for reasons set out in a decision promulgated on 26th of July 2019.

2. Permission to appeal was granted by First-tier Tribunal Judge Osborne on 29 November 2019. Following a hearing before me on 14th January 2020, I set aside the decision of Judge Thapar for reasons set out in my error of law decision. I found the decision of the First-tier Tribunal Judge is tainted by a material error of law and that the appropriate course is for the decision to be remade in the Upper Tribunal.

3. The matter was listed for a hearing on 16th April 2020, but that hearing was vacated because of the need to take precautions against the spread of Covid-19. As the issues in the appeal are limited, I issued further directions in which I expressed a provisional view that the hearing could be held remotely, by Skype for Business. Neither party objected. The resumed hearing before me on 15th September 2020 took the form of a remote hearing using skype for business. The hearing was adjourned part heard and listed before me again on 2nd February 2021. On both occasions I sat at the Birmingham Civil Justice Centre. I was addressed by the representatives and the hearing was conducted in exactly the same way as it would be if the parties had attended for a face-to-face hearing. I was satisfied that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate. I was satisfied that it was in the interests of justice and in accordance with the overriding objective to proceed with a remote hearing because of the present need to take precautions against the spread of Covid-19, and to avoid delay. I was satisfied that a remote hearing would ensure the matter is dealt with fairly and justly in a way that is proportionate to the importance of the case, the complexity of the issues that arise, and the anticipated costs and resources of the parties. At the end of the hearing I was satisfied that both parties had been able to participate fully in the proceedings.

4. The appellant's representatives did not file and serve a consolidated bundle setting out the evidence upon which the appellant relied, until 18:30pm on Friday 11th September 2020. That consolidated bundle running to some 291 pages included the evidence of a number of individuals that Ms Akinbolu intended to call to give evidence, but who had not given evidence before the FtT previously. As the bundle

previously sent had not reached me, Ms Akinbolu arranged for the bundle to be emailed to the Tribunal on 15th September 2020. Although I was told that the bundle runs to some 291 pages, I had only been provided with parts A and B, comprising of 115 pages. At the resumed hearing on 2nd February 2021, Ms Akinbolu assured me that she would only be referring to the material set out in the first 115 pages that I do have before me.

INTRODUCTION

5. By the decision dated 10th December 2018, the respondent refused a human rights claim made by the appellant. The appellant has appealed that decision under s82 of the Nationality, Immigration and Asylum Act 2002 on the ground that the decision is unlawful under s6 of the Human Rights Act 1998.

6. The appellant claims he arrived in the United Kingdom in April 1997 using a French identity document, in the name of Samir Madi, to which he was not entitled, but which he used to obtain work following his arrival in the UK. He claims that he has lived continuously in the UK for at least 20 years so that he satisfies the requirements to be met by an applicant for leave to remain on the grounds of private life set out in paragraph 276ADE(1)(iii) of the immigration rules. If that requirement is met, Ms Akinbolu submits, it follows that his appeal should be allowed on human rights grounds.

7. Because it is relevant to my consideration of the claim made by the appellant, I refer to the decision of FtT Judge White promulgated on 27th November 2012 following the refusal of a previous application for leave to remain that was made on 16th June 2011. That application was made on the basis of the appellant's long residence in the UK, and Judge White considered the appellant's claim that he has been in the UK since April 1997. Judge White heard evidence from the appellant and a number of witnesses. As evidence of his presence in the UK since April 1997, the appellant relied upon a series of payslips from a company called Fish and Fowl Ltd, for whom he claimed he worked *(using the name Samir Madi)*, as a delivery man. The

first payslip relied upon was dated 2nd May 1997. At paragraph [13] of his decision, Judge White said:

> "… If he entered the United Kingdom on 24th April 1997 he could not have been working for Fish and Fowl Limited for four weeks by 2nd May. He could not even have been working for two weeks by 2nd May, although that is what this payslip invites me to accept."

8. Judge White noted the appellant also relied upon a series of payslips from London Hotel Management Limited, the first of which was dated 30 April 2000, and the last dated December 2001. Judge White noted that subsequent to that, he had before him P60's for the employment of Samir Madi, firstly with Thameslink rail and then starting with the year ending 5th April 2006, from Chiltern Railway Co Ltd. At paragraph [16] of his decision, Judge White said.

> "… I have no doubt that on the balance of probabilities that it is the appellant who has been employed in the name of Samir Madi by Chiltern Railways for some time. It seems to me also on the balance of probabilities likely that the person who was employed in a similar capacity and with the same National Insurance number by Thames Link rail was also the appellant using the name Samir Madi. It seems to me that I have some reliable evidence covering the period from some time in 2002, certainly during the tax year up to the end of 5th April 2003 and thereafter, to show that Samir Madi has been employed by two railway companies in this country. This also shows that the person who has been using that identity is in fact the appellant who appears before me…."

9. At paragraphs [17] to [30] of his decision Judge White addressed the other evidence relied upon by the appellant at the hearing of his appeal in November 2011. At paragraph [21] Judge White addressed the evidence of the appellant's brother, Mohammed Talbi that he could remember in 2012, the precise date in 1997 when he went to Gatwick airport to collect his younger brother. Judge White concluded that "*... the evidence about a specific date must be approached with very considerable reservation.*". Judge White also found at paragraph [22] of his decision that the evidence of Samir Keniza that he was able to remember the date upon which he drove the appellant's brother to Gatwick airport to collect the appellant was not "*particularly reliable*".

10. Having carefully considered the evidence before him, at paragraphs [29] and [30], Judge White said:

> "29. … I come to the conclusion at the end of the day that I cannot be satisfied that the documents produced prior to 2002 are reliable documents and it seems to me that there is a very specific reason for thinking that the documents purporting to be from Fish and Fowl may in fact be wholly unreliable documents. If so it seems to me that this must affect the view that I take of the rest of the evidence. I conclude that those documents not being reliable and that the claim to remember a specific date on which the appellant entered the United Kingdom also not being reliable, it has not been shown on the balance probabilities that the appellant entered the United Kingdom as long ago as 1997.
>
> 30. It further seems to me that once I reach that conclusion it is impossible for me to be satisfied of the date on which he did finally enter the United Kingdom save that it must have been some time in or before 2002. It is also right to add that if he had, when first entering, a false French identity, he would have no difficulty travelling between this country and Europe, so that his presence, for example, at Mr Merzouk's wedding would not necessarily mean that he was continuously here thereafter. On the findings that I feel able to make I am not satisfied that he meets the requirements of paragraph 276B to have been in this country for a full period of 14 years. That is sufficient to mean that this appeal under the immigration rules falls to be dismissed."

11. I record at the outset, that at the hearing before me on 15th September 2020, Mrs Aboni conceded that although FtT Judge White does not expressly say in his decision that the appellant has lived continuously in the UK since 2002, the respondent accepts the evidence before Judge White at the hearing of the appeal in November 2011 was such that the appellant has established that he has lived continuously in the UK between 2002 and 2011. Furthermore she concedes that based upon the medical evidence and the applications that have been made to the respondent by the appellant since 2011, the respondent accepts the appellant has lived continuously in the UK since the decision of Judge White was promulgated.

The issues

12. In the respondent's decision of 10th December 2018, the respondent concluded that the appellant cannot satisfy the requirements for leave to remain on the grounds of private life set out in paragraph 276ADE (1) of the immigration rules for two reasons. First, the application falls for refusal on grounds of suitability, as the appellant's presence in the UK is not conducive to the public good and his conduct

and character makes it undesirable to allow him to remain in the UK. The respondent relies upon the appellant's deception in order to enter and remain in the UK, and his illegal presence in the UK throughout, which is said to show a blatant disregard of the immigration rules of the UK. Second, the respondent does not accept the appellant has provided sufficient evidence that he has lived in the UK since April 1997 and has therefore lived continuously in the UK for at least 20 years.

The evidence

13. The Tribunal has been provided with a comprehensive consolidated bundle that is relied upon by the appellant. Tab A of that bundle includes a copy of my error of law decision and the decision of Judge White promulgated on 27th November 2012. I have been provided, in Tab B, with a chronology and a number of witness statements that are relied upon by the appellant, and the appellant's medical records. As I have already said, the last page of that bundle that I have is page 115, and Mr Akinbolu confirmed in her submissions that it is that page, that she would be drawing my attention to.

14. It is entirely impractical for me to refer in this decision to all the evidence that is set out in the extensive bundle prepared by the appellant's representatives. I do however make it clear that in reaching my decision I have had regard to all of the evidence whether that evidence is expressly referred to or not, in this decision.

15. I heard evidence from the appellant, Mr Abbas Merzouk, Mr Mourad Maza and Mr Hamza Imansoura at the appearing before me on 15 September 2020. Each of them gave their evidence via video link. The appellant, Mr Mourad Maza and Mr Namza Imansour were able to give their evidence remotely from the offices of the appellant's solicitors. Mr Abbas Merzouk now lives in Slovakia and gave his evidence by video link from his home. I heard evidence from Mr Hakim Sadeg on 2nd February 2021. He too, gave his evidence remotely from the offices of the appellant's solicitors.

The evidence

16. The appellant adopted his witness statement dated 19th May 2020. He confirms that he was born in Algiers and that he is the second eldest of five siblings. He was about 20 years old when he left college and then spent about 1½ years in Algeria when he was neither studying nor working. He then went to college to study banking for two years and after the end of his course, he could not enter employment or continue to study. He claims, in 1996, he decided to go and see his uncle in Italy, and he stayed with his uncle for about six months. His brother was living in the UK and the appellant claims his intention was to come to the UK and make a better life for himself. The appellant had a conversation with his uncle and was introduced to someone in Naples. He was provided with a false passport and he used that document to book a flight to Gatwick. He claims he feels bad for entering the UK illegally and not making himself known to the authorities but was young and impressionable. The appellant maintains that his first job was as a delivery assistant in a Fish and Fowl Shop situated at Liverpool Street between May 1997 and March 2000. He also claims that he obtained a job in his true name of Morad Talbi using a temporary national insurance number as a night porter at Hyde Park West Hotel, London, between March 1998 and July 1999. He claims he was then employed as a night porter at the Majestic Hotel between March 2000 and December 2001, before working with British Rail from 2002 to 2012.

17. The appellant states that he has been supported by Mr Mustapha, his brother, and members of the Algerian community in his area. He claims that between 1999 and 2013 he assisted his friend Hamza Imansoura with the Cricklewood Football Team. In his oral evidence before me, he was referred to a photograph that appears at page 45 of the appellant's bundle. He confirmed that the photograph had been taken in 1998 in a pub in Charing Cross, following the wedding of his friend Mr Mourad Maza that had taken place that day at Wembley Town Hall. The appellant identified himself and Mr Maza in the photograph.

18. The appellant confirmed that he had met Mr Hamza Imansoura in the Cricklewood area in the late 1990s and they had become close friends. He was referred to the photograph at page 55 of the appellant's bundle and identified himself and Mr Imanzoura in that photograph.

19. By way of clarification, I asked the appellant when the photograph at page 55 of the bundle was taken. He replied that it was taken in Leytonstone about 15 years ago, although he could not recall exactly when. He also confirmed to me that he first met Mr Imansoura in 1997/1998 and to the best of his recollection, he had been in the UK for about 1 to 1½ years when they first met. He explained that there was a big Algerian community playing football in the Cricklewood area at the time, and only one halal butchers in the area that members of the community would go to. He said that they had both also prayed at the same Mosque and got to know each other. The appellant said that he used to see Mr Imansoura quite often and they played football together in 1998 before he became one of his assistants. They played football nearly every week at first, but then played less regularly.

20. The evidence of Mr Abbas Merzouk, Mr Mourad Maza, Mr Hamza Imansoura and Mr Hakim Sadeg is set out in the record of proceedings and it serves no purpose to burden this decision with a lengthy recitation of their evidence. I refer to the evidence in my findings and conclusions below.

The party's submissions

21. On behalf of the respondent, Mrs Aboni relied upon the matters set out in the respondent's decision. She submits the application under the immigration rules falls for refusal under the suitability grounds set out in Section S.LTR.1.6 of Appendix FM. That is, the presence of the appellant in the UK is not conducive to the public good because his conduct, character, associations, or other reasons, make it undesirable to allow him to remain in the UK. Mrs Aboni submits that having entered the UK unlawfully, the appellant demonstrated a blatant disregard for the Immigration Rules until he made an application some 14 years after his arrival. She

also submits that Sections S-LTR.4.2 and 4.3 are relevant because of the appellant's previous use of deception to remain in the UK. She submits the appellant used a false identity to enter and secured employment under that false identify, when he had no permission to work, and was also able to access medical services using that false identity.

22. Mrs Aboni submits that on the evidence before the Tribunal, the appellant has failed to establish that he has lived continuously in the UK for at least 20 years at the date of the application made on 8th May 2017. She submits Judge White previously found the documents relating to the presence of the appellant in the UK during the period prior to 2002 were unreliable, and there were doubts about the reliability of the evidence of the witnesses that Judge White heard from. Mrs Aboni submits that even if the appellant had attended the wedding of Abbas Merzouk on 28th March 1998 and the wedding of Mourad Maza on 3rd November 1998, that is not sufficient to establish the appellant has lived in the UK continuously since 1998. Taking into account the appellant's unlawful entry to the UK and his use of false documents previously, Mrs Aboni submits, the appellant could have left and re-entered the UK.

23. Mrs Aboni submits that although the appellant relies upon the evidence of a number of witnesses, the evidence is of little assistance in establishing whether the appellant has lived continuously in the UK. Each of the witnesses that have given evidence claim to believe the appellant has been in the UK, but none of them has been in continuous contact with the appellant throughout or has first-hand knowledge of the appellant's presence in the UK between 1997/98 and 2002. She submits none of the witnesses can say with any certainty that the appellant has been in the UK continuously and there is no independent evidence to corroborate his presence in the UK during that crucial period. Mrs Aboni submits the appellant cannot succeed under paragraph 276ADE(1)(iii) of the immigration rules, and if I find that he has lived in the UK for less than 20 years, the evidence does not establish that there would be very significant obstacles to integration into Algeria

where he has family. The appellant's family would assist him, and the appellant can continue to receive financial support from friends. He has remained in contact with the Algerian community and there is nothing to prevent the appellant maintaining contact with the friends that he has made. The private life that the appellant has established in the UK has been established while he has been in the UK unlawfully and having regard to the relevant public interest, Mrs Aboni submits, the appellant's removal would not be disproportionate or in breach of Article 8.

24. Ms Akinbolu relied upon her skeleton argument dated 11th September 2020. As to whether the application falls for refusal on grounds of suitability, she submits the suitability grounds relied upon are discretionary, and in any event, the appellant's unlawful entry to the UK and the deception relied upon by the respondent occurred over 10 years ago. She submits the duration of a re-entry ban where an applicant is deported from the UK or uses deception in an application for entry clearance would be 10 years. Here, the deception was over 10 years ago.

25. The appellant maintains that he meets the criteria of paragraph 276ADE(1)(iii), or alternatively, given the length of time he has been resident in the UK, removal would constitute a disproportionate interference with his private life. Ms Akinbolu submits there is no dispute between the parties that the appellant entered the UK in 1997 and the issue between the parties, is whether he lived in the UK continuously between 1997 and 2002. She refers to the witness statements and letters relied upon from various individuals that support the appellant's claim that he has resided in the UK since 1997 and the medical records that appear at pages 74 to 115 of the appellant's bundle that corroborate the claim that the appellant has resided in the UK since 2000. Mrs Akinbolu submits the evidence corroborates the appellant's account of entry in 1997, and continuous residence thereafter. Alternatively, she submits, the appellant has established a strong and entrenched private life in the United Kingdom over the course of 23 years in the United Kingdom, and, even if it is not accepted that he has produced evidence of continuous residence over that

period, the appellant has built up a substantial private life during that time. He has worked, both voluntarily and to support himself, and has paid the taxes due. He has assisted with various community-based projects, including the running of a local football team. He is a source of support to friends and to his brother, with whom he has a very close relationship, and in turn, he depends on others for their support. Ms Akinbolu submits that insofar as s.117B of the 2002 Act is concerned, the appellant is fully conversant in English, and whilst his leave has not been lawful, it has been substantial. The appellant has not relied on public support over the course of his time in the United Kingdom. Ms Akinbolu submits the appellant's ties with Algeria have significantly weakened, and his knowledge of current custom and culture is out of date. He has no job to rely upon, and little means of support. Thus, she submits, the strength and length of his private life in the UK outweighs the legitimate aim of maintaining immigration control.

Findings and conclusions

26. The appellant does not claim to have established a family life in the UK. The requirements to be met by an applicant for leave to remain on the grounds of private life are set out in paragraph 276ADE of the immigration rules. Insofar as relevant here, paragraph 276ADE states:

> "276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:
>
> (i) does not fall for refusal under any of the grounds in Section S-LTR 1.2 to S-LTR 2.3. and S-LTR.3.1. to S-LTR.4.5 in Appendix FM; and
>
> …
>
> (iii) has lived continuously in the UK for at least 20 years (discounting any period of imprisonment); or
>
> …
>
> (vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK."
>
> …

27. Being able to meet the requirements of paragraph 276ADE of the Immigration Rules requires being able to meet the suitability requirements set out in paragraph 276ADE (1). It is convenient to refer to the relevant requirements referred to by the respondent:

> **Section S-LTR: Suitability-leave to remain**
>
> S-LTR.1.1. The applicant will be refused limited leave to remain on grounds of suitability if any of paragraphs S-LTR.1.2. to 1.8. apply.
>
> …
>
> S-LTR.1.6. The presence of the applicant in the UK is not conducive to the public good because their conduct (including convictions which do not fall within paragraphs S-LTR.1.3. to 1.5.), character, associations, or other reasons, make it undesirable to allow them to remain in the UK.
>
> …
>
> S-LTR.4.1. The applicant may be refused on grounds of suitability if any of paragraphs S-LTR.4.2. to S-LTR.4.5. apply.
>
> S-LTR.4.2. The applicant has made false representations or failed to disclose any material fact in a previous application for entry clearance, leave to enter, leave to remain or a variation of leave, or in a previous human rights claim; or did so in order to obtain from the Secretary of State or a third party a document required to support such an application or claim (whether or not the application or claim was successful).
>
> S-LTR.4.3. The applicant has previously made false representations or failed to disclose material facts for the purpose of obtaining a document from the Secretary of State that indicates that he or she has aright to reside in the United Kingdom.

28. Here, the respondent refers to the appellant's immigration history and his claim to have entered the UK in April 1997. She notes the appellant's evidence that he entered the UK with a French ID that he obtained with the help of an agent. She noted it was not until June 2011, some 14 years later, that the appellant made an application for indefinite leave to remain on the basis of long residence under paragraph 276B of the immigration rules in force at the time. The respondent noted that the application was refused on 25th September 2012. On 25th September 2012 a form IS151; Notice that a person is to be treated as an illegal entrant/a person liable to administrative removal under section 10 of the 1999 Act was also served upon the appellant because the appellant had been found to have committed document abuse. The decision to refuse the application for indefinite leave to remain carried a right of appeal and the appellant's appeal

against that decision was dismissed by First-tier Tribunal Judge White in November 2012. The respondent referred to the further applications for leave to remain that were made by the applicant and refused in October and November 2013. She then states:

> "**Suitability**
>
> For the reasons given above, your application falls for refusal on grounds of suitability in Section S-LTR under paragraph 276ADE(1)(i) of the Immigration Rules because your application falls for refusal under paragraph S-LTR.1.6 of the immigration rules as your presence in the UK is not conducive to the public good and your character makes it undesirable to allow them *(sic)* to remain in the UK. This is because you claim to have been in the UK for over 20 years despite never having had any legal leave to enter or remain in the UK. You have shown blatant disregard of the immigration rules of the UK and have shown little, if any, desire to regularise your immigration status. Your application falls for refusal of suitability under Section S-LTR because you have previously used deception in order to enter and remain in the UK. You therefore fail to meet the suitability paragraphs S-LTR.4.2 and S-LTR.4.3."

29. I reject the submission by Ms Akinbolu that the suitability grounds are discretionary. Paragraph S-LTR.1.1 of Appendix FM states that an applicant <u>will be refused</u> *(my emphasis)* on grounds of suitability if any of paragraphs S-LTR.1.2. to 1.8. apply. Therefore, a mandatory refusal will result if one or more of the discrete factual circumstances are established, and paragraph S-LTR.1.6. identifies one such circumstance. Paragraph S-LTR.4.1. of Appendix FM states that the applicant <u>may be refused</u> *(my emphasis)* on grounds of suitability if any of paragraphs S-LTR.4.2. to S-LTR.4.5. apply and refusal under paragraphs S-LTR.4.2 and S-LTR.4.3 is therefore, discretionary.

30. An application can be refused on grounds of suitability under paragraph S-LTR.1.6 if the presence of the applicant is not conducive to the public good because their conduct, character, associations or other reasons make it undesirable to allow the applicant to remain in the UK. The wording of the provision is general in its terms, confirming that an applicant's presence in this country is 'not conducive to the public good' because their 'conduct', 'character', 'associations' or 'other reasons' make it 'undesirable' to allow them to remain in this country. The applicant does not need to have been convicted of a criminal

offence for the provision to apply. In his witness statement, the appellant accepts that he used a false identity to enter the UK and to work. He states that he has never been in trouble with the police and Mrs Aboni did not claim that the appellant has any convictions.

31. The immigration rules should be read sensibly, and I am mindful of the function which they serve in the administration of immigration policy. Lord Brown confirmed in Mahad v. Entry Clearance Officer [2009] UKSC 16, at [10], in a judgment approved by the other members of the Court, that '[t]he Rules are not to be construed with all the strictness applicable to the construction of a statute or a statutory instrument but, instead, sensibly according to the natural and ordinary meaning of the words used, recognising that they are statements of the Secretary of State's administrative policy.' I have already set out above the reasons given by the respondent for concluding that the application fell for refusal on the grounds of suitability.

32. A fact sensitive enquiry is required, and I remind myself that the burden of proof in respect of paragraph S-LTR.1.6 rests upon the respondent. It is uncontroversial that even if the appellant did arrive in the UK in April 1997 as he claims, he took no steps whatsoever to regularise his immigration status until he made his application for indefinite leave to remain on the basis of long residence, in June 2011. During that lengthy period of time, consistent with the findings previously made by First-tier Tribunal Judge White in the determination promulgated on 27th November 2012, I find the appellant used a false identity knowingly, to secure employment. In light of the entries set out in the appellant's medical records, I also find that he had access to medical treatment using the false identity. I have no doubt that he believed when he made his application in June 2011 that if he could satisfy the respondent that he has lived in the UK since April 2017 and therefore continuously for a period of 14 years, he was likely to succeed in his application. Paragraph 276B(i)(b) of the immigration

rules in force at the time, required that he had had at least 14 years continuous residence, lawful or otherwise, in the United Kingdom.

33. I find that the use of a false identity to enter, work and remain in the UK without making any attempt to regularise his immigration status for a significant period *(on the appellant's account, 14 years)*, amounts to sufficiently reprehensible conduct for the purposes of paragraph S-LTR.1.6. The conduct is not mere carelessness, genuine or in any way innocent. Even acknowledging the rule is concerned with conduct of a sufficiently serious character, albeit not requiring conviction for a criminal offence, and that even dishonest conduct will not always and in every case reach a sufficient level of seriousness, such dishonest behaviour as demonstrated by the appellant here, strikes at the heart of immigration control and as the respondent stated in her decision, demonstrates a blatant disregard for the immigration rules of the UK. There was, I find, a deliberate attempt by the appellant to evade immigration control and any contact with the respondent by a cynical attempt not to draw attention to himself until he believed he was in a position to demonstrate that he could make an application on the grounds of long residence in June 2011.

34. I must however consider whether that conduct, makes it undesirable to allow the appellant to remain in the UK. I do so, taking account of all relevant circumstances known about the applicant. The appellant claims in paragraphs [31] to [33] of his witness statement that he assists in the care of a friend that has been in a care centre for about 19 years after having had a stroke. The appellant sees him 3 to 4 times a week and provides him with assistance in feeding, going to the toilet and encouraging him with exercise. He also describes the bond that he has established with another individual that he met at the St John's Care Centre, that he has maintained contact with. That evidence was not challenged by Mrs Aboni and I accept it.

35. I have also had regard to the numerous statements and letters that are relied upon by the appellant that all speak to the appellant's kindness towards others, and

which I accept, establish that the appellant has made a positive contribution to his local community. I have a letter before me from the National Algerian Centre' dated 15th February 2017 that confirms the appellant has volunteered for the charity in numerous ways through partaking in projects and assisting at its café. The appellant is described in the letters and statements before me, as an individual that is well organised, competent, popular, honest, charitable and someone who dedicates much of his time to helping others. I accept, as the appellant claims, he has never been in trouble with the police. I also accept, as Ms Akinbolu submits, the deception the appellant embarked upon occurred several years ago. These are all factors that in my judgment weigh in favour of the appellant.

36. I conduct a balancing exercise informed by weighing all relevant factors, and in reaching my decision I have also had regard to the factors that weigh against the appellant. The appellant entered the UK illegally and sought for a significant period, to remain here, without any regard for immigration control. The appellant knowingly used a false identity document to enter that was supplied to him by an agent, in the name of someone else, and he used that false identity to seek employment. Although I accept that the appellant's fraudulent activities are not the most egregious, they do in my judgement, strike at the heart of immigration control. True it is that the deception occurred several years ago, but the appellant has been aware since his appeal was dismissed by Judge White in November 2012 that he has no lawful basis to be in the UK. Undeterred, and notwithstanding the positive contribution the appellant has made to his local community, the appellant has remained in the UK unlawfully, albeit now using his true identity. He sought to take advantage of paragraph 276B of the immigration rules in 2011 previously and having exhausted his right of appeal, nevertheless remained in the UK knowing he had no proper basis to do so. The appellant has throughout his presence in the UK demonstrated a blatant disregard for the immigration rules and the need for orderly immigration control. Although, as Ms Akinbolu submits, the duration of a re-entry ban where

an applicant is deported from the UK or uses deception in an application for entry clearance would be 10 years and the deception here occurred over 10 years ago, a 're-entry ban' such as that referred to in Appendix V of the immigration rules, applies from the date the individual left the UK. The appellant has made a positive contribution to his local community, but I am quite satisfied that those he has assisted and supported will continue to receive any support and assistance they require. The activities of the local community that he assists with, will continue without the appellant and without any detriment to the local community.

37. On balance, I am satisfied and find that the presence of the appellant in the UK is not conducive to the public good because his conduct makes it undesirable to allow him to remain in the UK. I find that the application falls for refusal under Section S-LTR.1.6. of Appendix FM.

38. In the circumstances, I do not need to consider whether the application also fell for refusal under the discretionary grounds set out in Section S-LTR.4.2 and S-LTR.4.3. I do however note that the appellant entered the UK unlawfully using a false identity document. He did not make any application to the respondent at all until the application made on 16th June 2011. He had not in fact made a false representation or failed to disclose any material fact in a previous application for entry clearance, leave to enter, leave to remain or a variation of leave, or in a previous human rights claim (*my emphasis)*. Similarly, he had not previously made false representations or failed to disclose material facts for the purposes of obtaining a document from the respondent *(my emphasis)* that indicates that he has a right to reside in the UK. He had entered unlawfully and simply did nothing until he made his application in June 2011. Any false representations that he made were not made to the respondent or made in a previous application to the respondent. Neither was any false representation made in order to obtain from a third party, a document required to support such an application or claim

to the respondent. It is the appellant's conduct that has led me to the conclusion that the application fell for refusal on grounds of suitability.

39. I now turn to the appellant's length of residence. I begin by saying that I do not accept, as Ms Akinbolu submits, that there is no dispute between the parties that the appellant entered the UK in 1997. The respondent does not accept the appellant arrived in the UK in April 1997. The respondent states in her decision: *"you have not provided sufficient evidence that you have lived in the UK since April 1997…"*. Mrs Aboni concedes the appellant has lived continuously in the UK since 2002. The issue is whether the appellant has lived continuously in the UK between April 1997 (the date he claims to have entered the UK) and 2002.

40. I remind myself that the principles set out in Devaseelan [2002] UKAIT 00702, apply and the determination of Judge White stood as an assessment of the claim that the appellant was making at the time of that first determination. Judge White concluded that he could not be satisfied that the documents produced before him to evidence the appellant's continued presence in the United Kingdom prior to 2002 were reliable documents. In fact, his view was that there is very specific reason for thinking that the documents purporting to be from Fish and Fowl may in fact be wholly unreliable and he concluded that the appellant had failed to establish on the balance probabilities that the appellant entered the United Kingdom as long ago as 1997.

41. Mrs Aboni concedes Judge White found the appellant must have come to the UK some time in or before 2002, and that the appellant has lived continuously in the UK since 2002. In my search to establish the dates between which I find the appellant has continuously lived in the UK, I have had regard to the documents that are set out the appellant's bundle, the evidence of the appellant, the letters and statements relied upon by the appellant and the oral evidence of the witnesses called to give evidence before me.

42. Ms Akinbolu drew my attention to the appellant's medical records that are to be found in the appellant's bundle. I see that the records relate to Samir Madi (born 03.03.78), the false identity adopted by the appellant when he entered the UK. At page 115 of the appellant's bundle there is an entry in the GP records dated 1st January 2000 which states *"Date of entry to Uk"*. There is no evidence before me as to how that entry came to be recorded in the GP records, but it suggests that at some point the appellant told his GP that he entered the UK in January 2000. Ms Akinbolu was unable to draw my attention to any other evidence explaining that entry in the appellant's GP records.

43. The first consultation recorded *(page 105 of the bundle)* is a consultation with Dr Britta Derbuch-Markovic at the GP surgery on 8th October 2002. That records the problem as "*Haemorrhoids"* and records the medication prescribed. That entry can be reconciled with the first entry in the section headed 'Medication' *(page 106 of the bundle)*. I am quite satisfied that there is evidence of regular attendances by the appellant and his GP surgery following that first entry recorded on 8th October 2002. The two entries dated 1st January 2000 and 1st January 2001 are curious. Looking at the GP records, I have been unable to find any evidence of consultations attended by the appellant between January 2000 and January 2001. In the section 'Significant past' *(page 74 of the bundle)*, there is an entry dated 1st January 2001 by Dr Richard Mendall. The entry simply states "*Haemorrhoidectomy*". If the appellant did in fact undergo a Haemorrhoidectomy, I have been unable to find anything within his GP records that record any consultations, referrals or medication leading to that procedure. In the absence of any satisfactory explanation for those entries, I find that the GP records relied upon by the appellant establish that he has lived in the UK continuously since October 2002.

44. I then turn to the other evidence before me regarding the appellant's presence in the UK. I gain no assistance from the following evidence. The authors of the various letters were not called to give evidence.

a. The letter the National Algerian Centre *(page 15 of the bundle)* confirms the appellant has volunteered for the charity since August 2013. It is uncontroversial that the appellant has lived in the UK continuously since 2002.

b. Miss Park states in her undated letter *(page 16 of the bundle)* that she met the appellant *"many years ago in London ..."*. There is no evidence before me as to when they first met.

c. Mr Sofiane Behidi states in his letter dated 16th January 2019 *(page 18 of the bundle)* that he has *"known Mr Talbi Mourad for many years"*. There is no evidence before me as to when they first met or the frequency of their contact over the years.

d. Elmas Lachi states in her letter dated 15th March 2019 *(page 16 of the bundle)* that she has known the appellant since 1998 and they have become very good friends over the years. There is no further elaboration as to the circumstances in which they first met, or the frequency of their contact over the years.

e. Nabil Benakmoum states in his letter dated 16th March 2019 *(page 25 of the bundle)* that he first met the appellant *"... Nearly 17 years ago and we have been close friends ever since ..."*. At its highest the evidence establishes that Mr Benakmoum met the appellant in or about 2002 and they have been close friends ever since. It is uncontroversial that the appellant has lived in the UK continuously since 2002.

f. Mr Halim Ghalem states in his letter dated 3rd April 2019 *(page 27 of the bundle)* that he has known the appellant since 1997, without any further elaboration. There is no evidence as to the circumstances in which they first met, or the frequency of their contact over the years, beyond the very vague

claim that the appellant is a very good friend and has been a customer in his shop since the opening.

45. In his letter dated 7th April 2019 (page 29 of the bundle), which Mr Hakim Sadeg confirmed in his oral evidence to be true, Mr Sadeg confirms that he has known the appellant "for the last decade". I accept his evidence, but it does no more than establish that the appellant has been resident in the UK continuously since 2009. It is uncontroversial that the appellant has lived in the UK continuously since 2002.

46. I attach little weight to the following evidence:

a. Mr Abdelkader Akhrih: He was not called to give evidence and his witness statement dated April 2020 (page 30 of the bundle) is unsigned. There are unexplained anomalies in his evidence. He claims that he has known the appellant since 1997. He claims they lived in the same house together between 1997 and 2008 when the appellant moved out. He claims the appellant did not leave the country during the time they lived together. He claims the appellant worked at the "Overground station" and he worked at Ria Money Transfer. They would see each other nearly every morning and often shared breakfast together. If they had lived in the same house together between 1997 when the appellant claims to have arrived in the UK, it is surprising that Mr Akhrih was not called to give evidence before First-tier Tribunal Judge White in 2012, to attest to the appellant's presence in the UK since 1997. Furthermore, Mr Akhrih refers to the appellant working at an 'Overground station'. The appellant claims that his first job was as a delivery assistant in a Fish and Fowl Shop, and that between March 1998 and July 1999, he also worked as a night porter at the Hyde Park West Hotel. It was not until 2002 that he began working for British Rail.

b. Azzedine Hattabey: He was not called to give evidence and his letter dated 2nd February 2019 (page 19 of the bundle) is unsigned. He states he has

known the appellant since the appellant came to England in 1997. He states he and the appellant are very passionate Arsenal football club supporters and the appellant "*... regularly used to come over to my house to watch football*". He states that they used to play football together in Algeria and England, and, when he first had a stroke "19 years ago" the appellant was always there for him. The letter is in the vaguest of terms and makes the bold assertion that he has known the appellant since the appellant came to England in 1997 without any information as to the circumstances in which they met and how he recalls that to be in 1997.

c. In his letter dated 14th March 2019 *(page 21 of the bundle)*, Samir Kenzia states that when the appellant arrived in the UK 22 years ago (i.e. 1997), the appellant's brother had asked him to pick the appellant from Gatwick airport. He goes on to say that during all these years the appellant has been a close friend to him and his family. He claims they have been "*socialising together for years*", mostly when playing football and eating out. Mr Keniza gave evidence before First-tier Tribunal Judge White as set out in paragraph [22] of Judge White's decision. He does not now claim to know the precise date upon which the appellant arrived in the UK but maintains the appellant arrived in the UK 22 years ago. There remains no satisfactory explanation as to how Mr Kenzia is able to say with any certainty that the appellant arrived in the UK in 1997. He is unable to point to a particular event by reference to which he is able to say, many years later, that he can be confident that the appellant arrived in the UK in 1997.

d. In his witness statement that is unsigned and dated April 2020 *(page 33 of the bundle),* Moustapha Harrak confirms that he met the appellant at the beginning of 1998, and they have been friends ever since. They met at the Cricklewood Mosque in London. He claims they would see each other without fail every Friday during lunchtime prayers. They also studied the Quran at the same group at the Harrow Road Mosque and met up socially

outside prayer and study. There has been no opportunity to test his evidence that he met the appellant in 1998 or the frequency of their contact thereafter.

47. I found Mr Abbas Merzouk to be a credible witness who was doing his best to assist the Tribunal. I accept the evidence of Mr Merzouk that he has known the appellant since childhood and that he first met the appellant in London when Mr Merzouk married in March 1998. Mr Merzouk candidly accepted that following the appellant's attendance at his wedding in March 1998, Mr Merzouk did not see the appellant very often, perhaps once or twice a year. He recalled two particular occasions. The first was a visit in 2006 and the second was a visit in 2015. I also accept the evidence of Mr Merzouk that he had first spoken to the appellant in 1997 after the appellant had obtained his phone number from Mr Merzouk's family and contacted him to tell him that he was in London.

48. I also found Mr Mourad Maza to be a credible witness and I accept his evidence that he met the appellant in 1997. He was able to credibly articulate how he knew the appellant, when and where he met the appellant. I accept his evidence that they became very close and the following year, when he got married, the appellant was a guest at his wedding. There is evidence in the form of a marriage certificate confirming that Mr Maza married on 3rd November 1998 and a photograph that was taken at his wedding, in which the appellant features. I accept his evidence that although he moved to Morden in 1999, he has remained in regular contact with the appellant.

49. Finally, I have been assisted by the evidence of Mr Hamza Imansoura, who I also find to be a credible witness. I accept his evidence that he first met the appellant in 1998 through the Cricklewood Football team, of which he is the Assistant Manager. I accept his evidence that he has worked together with the appellant on various projects and the appellant has had various roles, sometimes playing on the team, and at other times, acting as an assistant coach. I accept his evidence that the appellant participated in those projects between 1999 and 2013 and his

evidence that the appellant was in the UK between 1997 and 2002. He was able to confirm that he met with the appellant regularly, playing football, with matches on a Friday and training twice each week. His evidence was that that the appellant had started out as a player in 1997 or 1998 and when asked in cross-examination whether the appellant had ever left the UK since his 1997/98, he said that to the best of his knowledge the appellant had not ever left the UK.

50. The evidence of Mr Merzouk and Mr Mazza establishes the appellant's presence in the UK in 1997/1998. The evidence of Mr Imansoura establishes the appellant's continued presence in the UK between 1998 and 2002. Considering all the evidence before me, and in particular the oral evidence of the three witnesses that I heard from, I find that the appellant has established that he entered the United Kingdom in 1997 and has remained in the UK continuously since 1997. Although none of the witnesses were able to say when in 1997 the appellant arrived in the UK, the appellant has always maintained, and I am prepared to accept his evidence, that he arrived in April 1997. The appellant made his application for indefinite leave to remain on 8th May 2017. Looking at all of the evidence in the round, on balance, I find that at the date of application, the appellant had lived continuously in the UK for at least 20 years and satisfies the requirement set out in paragraph 276ADE(1)(iii) of the immigration rules.

51. However, as I have found that the requirement set out in paragraph 276ADE(1)(i) is not met because the application fell for refusal under the grounds of suitability, the application cannot succeed under the immigration rules. The only ground of appeal available to the appellant is that the respondent's decision is unlawful under s6 of the Human Rights Act 1998. The judgment of the Supreme Court in Agyarko -v- SSHD [2017] UKSC 11 confirms that the fact that the immigration rules cannot be met, does not absolve decision makers from carrying out a full merits-based assessment outside the rules under Article 8, where the ultimate issue is whether a fair balance has been struck between the individual and public interest, giving due weight to the provisions of the rules.

52. The appellant has now lived in the UK for almost 24 years and has clearly established a private life in the UK. The appellant confirms in his witness statement that he does not have a partner or children because he has been unable to develop a relationship whilst his immigration status is outstanding. I have had regard to the evidence of the appellant regarding his character and the disruption that his removal would cause to the acquaintances he has made in the United Kingdom, set out at paragraphs [30] to [45] of his witness statement. The appellant will undoubtedly have formed a bond with those that he refers to in his witness statement.

53. Article 8 is plainly engaged. I find that the decision to refuse the appellant leave to remain may have consequences of such gravity as potentially to engage the operation of Article 8. I accept that the interference is in accordance with the law, and that the interference is necessary to protect the legitimate aim of immigration control and the economic well-being of the country. The issue in this appeal, as is often the case, is whether the interference is proportionate to the legitimate public end sought to be achieved.

54. I have had regard to the respondent's policy as set out in the immigration rules. Despite the appellant's lengthy presence in the UK, I have found the appellant is unable to satisfy the requirements of the immigration rules because his presence in the UK is not conducive to the public good because his conduct makes it undesirable to allow him to remain in the UK. In reaching my decision, I have also had regard to the public interest considerations set out in s117B of the Nationality, Immigration and Asylum Act 2002. The maintenance of immigration control is in the public interest. I note the appellant is able to speak the English language and that he has previously worked in the UK, and has not been a burden on the taxpayer, albeit that he previously worked under a false identity. I remind myself that s117B (4) of the 2002 Act provides that little weight should be given to a private life established by a person at a time when

the person is in the United Kingdom unlawfully. The appellant's presence in the UK since 1997 has been unlawful throughout.

55. I have also had regard to the appellant's evidence set out in paragraphs [46] to [65] of his witness statement, regarding the perceived difficulties that the appellant would face in Algeria. The appellant spent the early formative years of his life in Algeria and his parents, a brother and sister remain in Algeria. He has remained in contact with his family. I find the appellant would have the support of his immediate family in Algeria. I have no doubt the appellant would prefer to continue his life in the UK and considers the UK to be his home and where his future lies.

56. I have carefully considered whether despite my finding that the application falls for refusal on the grounds of suitability for the reasons I have given, the decision to refuse leave to remain is nevertheless disproportionate. The factors that I consider in the balancing exercise that particularly weigh in favour of the appellant are:

a. The significant length of continuous residence in the UK since April 1997 and his integration into the local community.

b. Absent the suitability criteria, the appellant would now qualify for leave to remain in the UK under paragraph 296ADE(1)(iii) of the immigration rules.

c. The numerous statements and letters that are relied upon by the appellant that all speak to the appellant's kindness towards others, and which I accept, establish that the appellant has made a positive contribution to his local community. As I have said before, the appellant is described in the letters and statements before me, as an individual that is well organised, competent, popular, honest, charitable and someone who dedicates much of his time to helping others.

d. The appellant has never been in trouble with the police or been convicted of any offences and acknowledges the deception he engaged in when he was younger and impressionable.

e. The deception the appellant embarked upon, occurred several years ago.

57. The factors that I consider in the balancing exercise that particularly weigh against the appellant are:

a. The appellant's presence in the UK has throughout been unlawful. The appellant entered the UK illegally with a false identity document and sought for a significant period, to remain here, without any regard for immigration control.

b. The appellant knowingly used a false identity document to enter that was supplied to him by an agent, in the name of someone else, and he used that false identity to seek employment.

c. Although the deception occurred several years ago, the appellant has been aware since his appeal was dismissed by Judge White in November 2012 that he has no lawful basis to be in the UK, but he has remained in the UK unlawfully, nevertheless.

58. I also acknowledge that where an individual has lived continuously in the UK for at least 20 years, there is perhaps an implicit acceptance within the immigration rules that in doing so, they will have been in the UK unlawfully. The 20-year residence requirement set out in paragraph 276ADE(1)(iii) does not require that a person has lived in the UK lawfully, but simply "continuously". It is however plainly to the detriment of society that people seek to circumvent the immigration rules by entering the UK unlawfully and by using false documents to procure work and services that they are not otherwise entitled to do.

59. The facts and circumstances here can in my judgement be distinguished from those cases where an individual enters the United Kingdom lawfully, but during the course of the individual's continuous presence in the United Kingdom, the individual's presence becomes unlawful, even for a significant period, because any leave to enter or remain came to an end. The appellant entered the United Kingdom unlawfully, and for the first 14 years, as I have found, embarked upon a deliberate attempt to evade immigration control and any contact with the respondent by a cynical attempt not to draw attention to himself until he believed he was in a position to demonstrate that he could make an application on the grounds of long residence in June 2011. Even after that application had been refused, and the appellant had exhausted its rights of appeal in March 2013, the appellant went on to make further applications that would act to prevent his removal until determined. There was, I accept, a period of inactivity on the part of the respondent between November 2013 and May 2017, but put in context, that period of inactivity was of a short duration. The facts and circumstances here can also be distinguished from those cases in which during the course of a lengthy period of unlawful presence in the UK, the individual has established a meaningful family life such that the removal of the individual would impact upon a partner or children. As the appellant candidly accepts in his witness statement, he does not have a partner or child because he has been unable to develop a relationship whilst his immigration status is outstanding.

60. In my final analysis, I find the appellant's protected rights, whether considered collectively with rights of others that he has formed associations with, or individually, are not in my judgement such as to outweigh the public interest in the appellant's removal having regard to the policy of the respondent as expressed in the immigration rules. For the reasons that I have set out, I am satisfied that on the facts here, the decision to refuse leave to remain is not disproportionate to the legitimate aim of immigration control. In the circumstances I dismiss the appeal on Article 8 grounds.

Notice of Decision

61. I dismiss the appeal on Article 8 grounds.

Signed *V. Mandalia* Date 16th February 2021

Upper Tribunal Judge Mandalia