



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2021-
001855**

HU/04203/2020

THE IMMIGRATION ACTS

Heard at Field House

**Decision and Reasons
Promulgated**

On 8 November 2022

On 9 January 2023

Before

**Upper Tribunal Judge NORTON-TAYLOR
Deputy Upper Tribunal Judge MANUELL**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**Mr KHALED KOUIDER-ALI
(NO ANONYMITY DIRECTION)**

Respondent

Representation:

For the Appellant: Ms A Everett, Senior Home Office Presenting
Officer

For the Respondent: Mr A Chakmakjian Counsel,
(instructed by Kilby Solicitors)

DECISION AND REASONS

Introduction

1. Permission to appeal was granted to the Secretary of State for the Home Department by First-tier Tribunal Galloway on 1 March 2022 against the decision to allow the Respondent's Article 8 ECHR private life appeal based on 20 years' continuous residence made by First-tier Tribunal Judge K R Moore in a decision and reasons promulgated on 20 December 2021.
2. The Respondent is a national of Algeria, born there on 1 August 1970. The Respondent had applied for leave to remain on the basis of 20 years' lawful continuous long residence. (An earlier long residence application based on 14 years' lawful continuous long residence had been refused and dismissed on appeal in 2011.) The Respondent's 20 year application was refused by the Secretary of State because it was considered that he had failed to provide sufficient evidence of his claimed period of residence and also under paragraph S.LTR.1.6 of Appendix FM of the Immigration Rules, on the principal ground that the Respondent had been convicted and sentenced on 15 October 2019 to 6 months' imprisonment for the offence of possession/control of an identity document with intent. According to the Secretary of State this meant that his application fell to be refused on Suitability grounds on the basis of the public interest. There were no exceptional circumstances and no compassionate factors. There was no family life claim. The Appellant could reintegrate in Algeria without facing very significant obstacles.
3. Judge Moore found the Respondent had been continuously resident in the United Kingdom for 24 years, as the Respondent had claimed. Better evidence had been provided than that supplied at the time of the previous dismissed appeal in 2011. The judge found that the Respondent had not been candid about his ties to Algeria and found that the Respondent had close family there, his mother and two brothers. Bearing in mind the Respondent's skills as a chef and his familial network in Algeria, and taking into account his resourcefulness and industry in adapting to the new environment and culture in the United Kingdom, the judge did not accept that the Respondent would face very significant obstacles to his reintegration into Algeria, despite having lived in the United Kingdom for 24 years. Although it was plain that the Respondent had used a false passport to obtain leave to remain in the United Kingdom and employment, the judge found that this was a single criminal offence. There were a number

of significant positive factors in the Respondent's favour, including the payment of income tax from his employment. Taking all matters into account, the judge found that the misconduct of the Respondent was not sufficient to justify refusal of his claim on Suitability grounds. The judge also found that requiring the Respondent to leave his employment and network of friends in the United Kingdom was an exceptional circumstance which warranted a grant of leave to remain.

4. Permission to appeal was granted by First-tier Tribunal Judge Galloway because it was considered arguable that the judge had erred in law by concluding that paragraph 276ADE of the Immigration Rules was satisfied on the facts of the case, having found that the Respondent had been present in the United Kingdom for 24 years. The judge had not considered paragraph S-LTR of Appendix FM in a context where the Respondent had received a 6 month custodial sentence for an offence of possession/control of identity documents with intent. The Respondent had entered the country on a false passport and obtained employment. It was arguable that the errors were material as the judge had failed to have regard to paragraph S-LTR 1.6 (and whether the Respondent's presence in the UK was not conducive to the public good).

Submissions

5. Ms Everett for the Appellant relied on the grounds submitted and the grant of permission to appeal. Candidly Ms Everett accepted that neither the grounds nor the grant provided a clear statement of the material error of law which was asserted on Secretary of State's behalf. Nevertheless Ms Everett had no instructions which entitled her to withdraw the appeal. It was not asserted that the judge's decision could properly be categorised as perverse. The most that could be submitted was that the reasoning was inadequate, which was the gravamen of her submission.
6. This issue of arguably deficient reasoning was explored in dialogue with Ms Everett. [31] of the First-tier Tribunal judge's decision was examined in detail with Ms Everett's assistance. While it was true that the judge had not explicitly mentioned paragraph S-LTR.1.6, Ms Everett could not point to any misapplication or misunderstanding of the elements of that provision.

7. Mr Chakmakjian for the Respondent submitted that there was no material error of law in the First-tier Tribunal's determination. The judge's views could not be characterised as "Wednesbury" unreasonable and should not be interfered with even if another view could be taken. The determination was very thorough and should not be set aside.
8. Paragraph S-LTR.1.6. of Appendix FM is as follows:

"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."
9. The judge chose not to set out the paragraph in his decision but he applied to key elements of the provision and did not take a restrictive approach. It is perhaps not necessary to state that not every judge would have come to the same conclusions on the facts of the present appeal as the conclusions reached by Judge Moore. That will sometimes be the case where a judgment is in effect an evaluation or a balancing exercise. Weight to the competing factors will be for the trial judge in the absence of specific legislative directions.
10. It is clear from the decision that the evidence was considered in detail before the First-tier Tribunal, with four live witnesses in addition to the Respondent. The evidence was significantly different from that provided at the appeal in 2011. There was no challenge to the judge's finding that the Respondent had proved that he had been in the United Kingdom for 24 years.
11. The judge expressly considered the public interest factors applicable to the Appellant's single offence. There was no suggestion that the judge had erred in his findings of fact. The Respondent's sole conviction was correctly identified. The judge considered that it related directly to his long residence rather than constituting what might be seen as separate wrong doing. That was open to him. The judge also found that the Respondent's associations were sound.
12. It seems to the tribunal that the judge's evaluation of the Respondent's conduct was adequate, as was the consideration of the public interest, so that the distinctly

tentative reasons challenge advanced must fail. In our view the Secretary of State has been unable to demonstrate anything beyond disagreement with the decision.

13. It follows that the judge was entitled conclude that the Respondent did not fall foul of the suitability requirement under S-LTR.1.6. In light of this and the finding on the length of continuous residence in the United Kingdom, the judge was also entitled to conclude at [34] that the requirements of paragraph 276ADE(1) (iii) of the Immigration Rules were met and that this was, in the circumstances of this case, effectively determinative of the proportionality exercise.

DECISION

The Secretary of State's appeal to the Upper Tribunal is dismissed.

There was no material error of law in the First-tier Tribunal's decision and reasons, which stands unchanged

Signed R J Manuell Dated 11 November 2022

Deputy Upper Tribunal Judge Manuell