IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001901
First-tier Tribunal No: HU/53332/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 06 August 2023

Before

UPPER TRIBUNAL JUDGE RIMINGTON
DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

Secretary of State for the Home Department
(NO ANONYMITY ORDER MADE)

Appellant

and

Mr ABDALLA ADAM

Respondent

Representation:
For the Appellant: Mr E Terrell, Senior Home Office Presenting Officer
For the Respondent: Mr S Khan, Counsel instructed by A and P Solicitors

Heard at Field House on 25 July 2023

DECISION AND REASONS

1. The Secretary of State appeals with permission a decision of Judge Hussain of the First-tier Tribunal allowing the appeal of Abdalla Adam against her refusal of his application for leave to remain based on the strength of his private life rights resulting from his long residence in the UK.
2. For ease of reference, we refer to the parties as they were known in the First -tier Tribunal, in other words the Secretary of State as the respondent, and Abdalla Adam as the appellant.
3. The judge found that the appellant had achieved over 20 years continuous residence in the UK, having resided here since 1999, and so met the requirements of the 20 years residence rule at paragraph 276 ADE (1). The judge found that although the rule was met it would not be a breach of his human rights outside the rules to remove him in light of his immigration history including reliance on falsified entries on his passport.
4. The grant of permission identified as an arguable error of law, the ground that the judge's decision is inadequately reasoned and lacked rationality not least

because it had never been the appellant's case that he had accrued 20 years residence. Further as the only ground of appeal available was a breach of human rights the allowing of the appeal lacked coherence.

5. Mr Terrell reminded us that the case had proceeded before the First-tier Tribunal judge on the basis that it was accepted between the parties the appellant had re-entered the UK in 2003 and the stamps in his passport to that effect were genuine. At paragraph [16], the judge sets out aspects of the oral evidence of the appellant about when he was here and when he returned to Ghana that were contradictory and inconsistent with bank statements he had provided and a letter evidencing his registration at a GP practice. The judge preferred the evidence of the bank statements and the GP's letters. On the basis of those inconsistencies the judge found that in all probability the appellant had not left the UK re enter in 2003, and so had been here continuously from 1999. In reaching that conclusion the judge had failed to take account of the positive evidence of a 2003 out of country grant of a visa and a UK entry stamp endorsed on his passport accepted by the Respondent as genuinely issued and seemingly by the appellant himself. If the judge had properly taken into account this uncontroverted and reliable passport evidence when assessing the reliability of the inconsistent evidence of the bank statement and the GP's letter, the passport evidence would have outweighed the other. The second ground of appeal builds on the first in that although it is clear the judge intended to allow the appeal, the reasoning is flawed when he does so on the basis of the satisfaction of the rules rather than on the only available ground of Article 8.

6. Mr Khan briefly submitted the judge could accurately be said to be following the evidence when concluding discrepancies identified during the hearing meant that it was not established that the appellant had ever left the UK and re-entered in 2003. He recognised the difficulties of that finding as there had never been any dispute between the parties that the appellant had in fact re-entered in 2003, as shown by the visa and entry stamp. Further the finding that the passport evidence had been falsified ran contrary to the accepted evidence. In short the appellant was only claiming residence from 2003, such that it was accepted he could not meet the 20 year requirement, contrary to the judge's finding, and his case before the judge was the significant private life he had developed during residence of some 19 years in the context of proportionality.

7. We found merit in Mr Terrell's submissions. The grounds reveal an erroneous approach. Unfortunately the judge only moved on to consider the passport evidence after he had decided the appellant had never left the UK. As a result he was in effect relying on his own findings about the appellant's continuing presence here to decide the passport evidence was fraudulent. In doing so the judge went behind the agreed position of the parties and failed to provide an opportunity for them to address him on the issue and so fell into legal error. As Mr Terrell confirmed, the respondent is satisfied that the passport evidence is genuine so that had the judge raised the matter with the parties he would have had the benefit of that clarification and the issue identified by the judge would have resolved in the appellant's favour in relation to finding the appellant had presented forged stamps in his passport.

8. We invited representations about how, accepting the error as identified, we should proceed. Mr Khan asked for a remittal de novo with all matters to be considered. We pressed him to explain why the findings at paragraph [35] and [37] should not be retained. Mr Khan confirmed there had been no rule 24 response to the grant of permission, and no cross-appeal challenging the adverse findings at [35] about the absence of very significant obstacles to integration. The appellant did not attend the hearing before us, and no application to provide additional evidence had been made.

9. Mr Terrell very fairly pointed out even were this tribunal to correct the Rule 276 ADE(1) finding and remake that finding to the point that the appellant had not acquired 20 years residence, and retain the unchallenged finding that there were no "very significant obstacles to integration" as required in the alternative by Rule 276 ADE (vi) as per the judge's unchallenged findings at [35], the consideration outside of the rules at [37] dealing with the test of "unjustifiably harsh consequences" was tainted by the unsustainable findings of fact because the judge had brought forward into that consideration his erroneous conclusion that the appellant had fraudulently falsified the passport entries to show he had obtained a visa and re entered in 2003. In those circumstances the proportionality exercise at [37] could not in fairness stand and would need to be remade. The judge's error touched on issues of fairness such that rather than retaining the appeal for re-making in the Upper Tribunal the appellant should have the benefit of a properly conducted First-tier Tribunal proportionality exercise following a correct application of the rules.

10. In those circumstances we have decided that the case should be remitted to the First-tier Tribunal. The finding that the appellant has shown continuous residence since 1999 is set aside for the reasons set out above. Any calculation of residence will need to take as its starting point the agreed 2003 re-entry date evident on the passport. For the reasoning set out above the finding that the appellant falsified passport entries is also set aside. There being no challenge to the finding that the appellant would not face very significant obstacles to his integration on return [35], that finding is preserved. The First-tier Tribunal will need to conduct a fresh proportionality assessment as at the date of the remitted hearing.

Notice of Decision

The Secretary of State's appeal succeeds. The decision of the First-tier Tribunal allowing the appeal is vitiated by legal error and we set it aside. We remit the appeal to the First-tier Tribunal with the preserved finding that the appellant will not face very significant obstacles to his integration on return.

E M Davidge

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

25 July 2023