



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

Case No: UI-2023-

002425

First-tier Tribunal No:  
HU/57348/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

11<sup>th</sup> September 2023

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SYMES**

**Between**

**MOHAMED BOUTICHE**  
**(Anonymity order not made)**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Plowright  
For the Respondent: Ms McKenzie

**Heard at Field House on 10 August 2023**

**DECISION AND REASONS**

1. This is the appeal of Mohamed Boutiche, a citizen of Algeria, against the First-tier Tribunal's decision (of 16 March 2023) dismissing his appeal, itself brought against the refusal of leave to remain (of 12 October 2022) based on an application (of 29 October 2021) predicated on having established private life via long residence in the UK.
2. The application was based on the Appellant's asserted long unlawful residence from 10 June 2001. It was refused because the Respondent did not accept that the Appellant had demonstrated 20 years of UK

residence; he had previously made an application asserting that he had entered the UK on 17 November 1996, but now said he had been here since 2001, a matter of which he was thought to have provided no satisfactory proof. The Respondent stated

“You have provided no documentary evidence that proves that you entered the UK on 10 June 2001. Furthermore, you previously indicated in an application made for Long Residency ... that you entered the UK on 17 November 1996. Similarly, you were unable to provide any proof of this. Therefore, it is not accepted you have lived continuously in the UK for at least 20 years.”

3. The Appellant brought an unsuccessful appeal against that earlier refusal. On that appeal he argued that he had been resident in the UK since 1996 and had relied on payslips from Soho Spice and Pizza Bella, in the alias in which he claimed to have worked, Pascal Pupunate. He provided a false passport in that name which he admitted at the outset of the hearing he had purchased from a friend; in truth he had worked in the market in his own true identity. His brother Ali gave evidence to similar effect. Both thus admitted to Judge Jacobs-Jones that their witness statements contained falsehoods from which they sought to disassociate themselves. The Appellant said he had only seen the documents submitted on his behalf at the hearing, there having been problems with his previous solicitors. He had been told by friends to obtain false documents. Other witnesses gave evidence of the Appellant's presence in the UK since 1996. Judge Jacobs-Jones concluded that the evidence as to the length of the Appellant's asserted residence was unreliable, given the admitted dishonesty, compounded by inconsistencies in the evidence of the Appellant's witnesses as to matters including when he first began using the name Pupunate. There was very little credible evidence to link the Appellant to that identity.
4. In his witness statement for the present appeal the Appellant argued that he had arrived here in late spring or early summer 2001, entering the country illegally using a French passport; he could only remember the first name therein, as being Eric. The Respondent's review that preceded the appeal hearing states that “Whilst the documents themselves may have been genuine, R submits that there is no evidence to verify that these documents were issued” to the Appellant.
5. The First-tier Tribunal dismissed the appeal, concluding
  - (a) There was no contemporaneous documentation predating 2013 attesting to the Appellant's UK residence.
  - (b) A letter from his current employer Lipman & Sons certifying that Pascal Pupunate had worked there since 2007 to the present day was to be treated with a degree of reservation, given it inexplicably contained two different typesets; the photograph it bore might have been a replacement for the original one. A further letter from Lipman & Sons referred to Mr Pupanate's workplace pension

- though was not addressed to anyone in particular; the date thereon looked like it might have been cut and pasted onto the document.
- (c) The documents supplied were unreliable and to be treated with caution and afforded very little weight. It was not established that the Appellant was indeed the same person as Pascal Pupunate.
  - (d) The Appellant's advocate's submission below that the Respondent had stated she accepted the veracity of the documentation but not that it established the asserted UK residency was rejected: reading the documents as a whole, it was clear that credibility was disputed.
  - (e) The evidence from the Appellant and his brother was short in compass and simply listed a series of asserted employments.
  - (f) Overall on balance of probabilities the Appellant's claim to have resided in the UK for 20 years at the application date was rejected. His UK ties were not sufficient to render the immigration decision disproportionate.
6. Grounds of appeal contended that the Respondent had not alleged that the documents were forgeries or otherwise unreliable and it was unfair for the Judge to raise the matter for the first time at the hearing.
7. Mr Plowright concisely summarised the Appellant's case in line with the grounds of appeal, emphasising the importance of the disputed issues being clear to all involved in the proceedings. Ms McKenzie argued that the decision was not unfair: the Appellant's credibility was plainly in dispute given the history of his applications and appeals.

### **Decision and reasons**

8. This appeal turns on whether the hearing below was conducted fairly. It seems the matter came on late in the day having been placed in a float list. However the First-tier Tribunal's decision appears to me to be a careful document, at the time of writing of which the Judge was clearly appraised of the issues and evidence before him. The central issue now is whether the Respondent had put the reliability of the documents in issue.
9. Were this appeal to have been the Appellant's first encounter with the Tribunal, one might have greater sympathy for the submission that there was a degree of unfairness in the approach taken below. But his real difficulty is that he started from the significant disadvantage of having received strongly adverse credibility findings when previously advancing a long residence claim. Where there has been a prior judicial determination on the issues in the appeal, in principle that assessment represents the starting point for the subsequent appeal as set out in Devaseelan (D (Tamil)) [2002] UKIAT 00702: in short the prior determination is the authoritative historic resolution of the case, although a Judge is entitled to take account of subsequent facts, whilst treating the adduction of further evidence relating to the historic situation with circumspection, although this principle is modified where

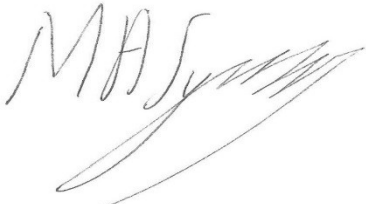
there is a very good reason for the failure to adduce any particular evidence in the earlier proceedings. The Respondent's subsequent reasoning needs to be read with this in mind.

10. I do not consider that the refusal letter contains any concession as to the reliability of supporting documents adduced by the Appellant. It simply states that he was unable to provide any proof of his asserted arrival date. The Respondent's review could doubtless have been more clearly expressed. But I do not believe that the statement that the documents "*may have been genuine*" (my emphasis) evinces any clear intention not to challenge their authenticity at the hearing. Indeed the argument put in the next phrase that "there is no evidence to verify that these documents were issued" to the Appellant demonstrates as much. The most natural reading of the Respondent's stance is surely that, whilst these documents may themselves have been genuine when originally issued, they were not necessarily issued to the Appellant. Inevitably that implies an assertion of dishonesty in the Appellant's procurement of these documents in support of his appeal. Accordingly I do not accept the First-tier Tribunal acted unfairly in casting doubt upon their reliability.
11. My role is to determine the lawfulness of the First-tier Tribunal's reaction to the evidence before it, rather than to make findings of my own, but it is nevertheless apposite to note that the Appellant's evidence of long residence has been consistently unsatisfactory in the extreme. This goes beyond the admitted dishonesty in previous appeal proceedings. It is odd that he felt able to specify a precise arrival date in the application form underlying this appeal yet by the time of the appeal hearing could only say that it was May or June 2001. His brother's statement simply asserts that he now recalls that the Appellant arrived over that period without any explanation of his confidence as to the accuracy of his recollection (indeed he refers to having previously believed that he had arrived in April 2001, which hardly inspires confidence). No other witnesses have come forward to confirm long-standing knowledge of the Appellant, notwithstanding his extended period of residence in the UK. All of these considerations tend to support the conclusions of the First-tier Tribunal. In any event, I consider that the conclusions of the Tribunal below were lawfully made and rationally open to it.

Decision:

The decision of the First-tier Tribunal contained no material error of law. The appeal is dismissed.

(HU/57348/2022)

A handwritten signature in black ink, appearing to read 'M.A. Symes', with a long, sweeping underline that extends to the left and then curves back under the signature.

Deputy Upper Tribunal Judge Symes  
Immigration and Asylum Chamber

**29 August 2023**