



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

Case No: UI-2022-003368

First-tier Tribunal No: PA/00262/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

28<sup>th</sup> February 2024

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**JAMAL BIDEMI OLAYINKA**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms K Wass, instructed by DJ Webb & Co Solicitors

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

**Heard at Field House on 19 February 2024**

**DECISION AND REASONS**

1. This is the re-making of the decision in the appellant's appeal, following the setting aside, in a decision promulgated on 19 October 2023, of the decision of First-tier Tribunal Judge Lewis.

2. The appellant is a citizen of Nigeria born on 18 May 1975. He has a lengthy immigration history in the UK and has made many unsuccessful applications and claims. He claims to have entered the UK in or about September 1995 with a visa, although the respondent has no trace of such entry. On 1 August 2011 he made an

application for leave to remain on the basis of long residence which was refused on 29 September 2011 with no right of appeal. His legal representatives made further submissions in late 2011, and in December 2013 made a request for reconsideration which was rejected by the Respondent. Further correspondence followed, during which the appellant requested permission to work and sought the involvement of his MP. On 6 May 2015 the appellant was served with illegal entry papers and reporting conditions were set. On 28 May 2015 he made a human rights application which was refused and certified on 4 June 2015. A further application was made on 20 November 2015, which was refused on 14 September 2016 with an in-country right of appeal. Although an appeal was lodged on 30 September 2016 it was subsequently withdrawn on 6 September 2017. On 14 November 2017 the appellant made an application based on long residence which was refused on 20 November 2018 without a right of appeal and he was refused permission to seek judicial review of that decision on 21 January 2019.

3. On 25 April 2019 the appellant made a protection claim and was interviewed about his claim. His claim was refused on 10 December 2020 and it is that decision which has given rise to these proceedings. In the decision refusing the claim, the respondent set out the appellant's protection claim which was based upon a land dispute resulting in the death of his aunt and his father and uncle and which led to him fleeing Nigeria with the help of his step-father Rashid Saalami, who passed away in 1997/98. The respondent also considered the appellant's claim to have suffered from depression and poor memory as well as physical problems as a result of being attacked with a hammer at a tube station in November 2018. The respondent did not accept the appellant's claim about the land dispute and considered that he was at no risk on return to Nigeria. The respondent did not consider that the appellant's medical issues met the threshold to make out an Article 3 claim. With regard to Article 8, the respondent noted the appellant's claim to be in a relationship with a Chinese national but considered that he did not meet the requirements of Appendix FM in that regard as his partner was not a British citizen and was not settled in the UK. The respondent went on to consider the appellant's claim to have lived in the UK continuously for over 20 years for the purposes of paragraph 276ADE(1)(iii) but considered that the evidence produced did not show continuous residence for the relevant period and considered, further, that the appellant had failed to demonstrate any very significant obstacles to integration in Nigeria. The respondent considered there to be no exceptional or compelling circumstances justifying a grant of leave on wider Article 8 grounds and conclude that the appellant's removal would not breach his human rights.

4. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Lewis on 18 February 2022 and was dismissed in a decision promulgated on 19 May 2022. Judge Lewis did not consider the appellant's claim to be at risk on return to Nigeria to be credible and he rejected his case on protection grounds. The judge did not consider the appellant to be a seriously ill person for the purposes of Article 3 and considered that he could access medical treatment in Nigeria if required. As for the appellant's claim to be entitled to leave on the basis of 20 years' long residence, Judge Lewis considered that the evidence was not sufficient to demonstrate continuous residence for the period claimed. He noted that the main difficulty with the appellant's evidence was that it was in different identities, with earlier GP records being in the name of Fatai Salami and later records, from 2010, being in the appellant's current name. The judge noted the appellant's claim that both identities were his and that Fatai Salami was his identity, using his stepfather's name, but considered that the overlap in the GP records suggested that there two different people. He rejected the appellant's claim that he used the identity Fatai Salami but found, in any event, that there was a gap in the evidence of residence between 1997 and 2009 and considered

that, at best, the evidence supported the claim of continuous residence from 2010. The judge did not, therefore, accept that the appellant had demonstrated 20 years of continuous residence in the UK and found that he could not meet the requirements of paragraph 276ADE(1)(iii). He did not accept that the appellant had demonstrated very significant obstacles to integration in Nigeria and he found that the appellant had not been able to show that his removal would be disproportionate on wider Article 8 grounds.

5. The appellant sought, and was granted, permission to appeal against Judge Lewis' decision. He brought the appeal on grounds of unfairness and challenged the judge's findings on his asylum claim and on long residence.

6. For the appeal the appellant produced a statement and further evidence which he had obtained from two subject access requests to the Home Office. In that statement, dated 19 September 2023, he explained that he had been unrepresented before the First-tier Tribunal and had not understood the importance of the Home Office bundle, but had since instructed legal representatives who had made the subject access requests for him. The appellant explained that the name 'Fatai' belonged to him and 'Salaami' belonged to his stepfather and he had taken on his step-father's name when he came to the UK, but when his biological father passed away in 1998/99 he decided to change his name to reflect his heritage and therefore adopted his father's surname 'Olayinka' and started using that name from 2001 onwards. The appellant explained further that he had changed his details with his GP surgery to his current name on 14 May 2010 and 28 November 2011, having originally registered there on 24 October 1995 in the name of Fatai Salami, and had provided to his GP a Change of Name Deed and a copy of a police lost property sheet. He referred to a recent letter from his GP practice confirming that and then referred to the various documents now produced which he stated evidenced his continuous residence in the UK since 1995.

7. The appeal came before myself and Deputy Upper Tribunal Judge Keith on 19 October 2023. In our decision we observed that the subject access request contained considerable information about the appellant's life in the UK "*including what seems on the face of the papers evidence capable of showing that he was in the UK from 2002*" and noted that the material had been in the possession of the Home Office for some time and that we were unable to find any reference to the material having been previously considered by the Home Office.

8. Ms Everett, for the respondent, conceded that there was an error of law in Judge Lewis's decision "*as he was clearly not provided with all of the relevant material*". On the basis of that concession the appellant's representatives stated that the other matters in relation to procedural fairness were not pursued, neither were the asylum or Article 3 appeal. Therefore, the sole issue remaining in the appeal was the Article 8 determination on the 20 year residence route.

9. We found as follows:

"10. On the face of the papers, if genuine, there may be sufficient evidence to show that the appellant has been residing in the UK for over 20 years.

11. As a result, we find an error of law in relation to the Article 8 consideration as a result of the failure to put before the FTT Judge the papers in possession of the Home Office. However, the Home Office have not made a decision based on this material.

12. Having considered the interests of justice and the Presidential guidance we consider that the case should be retained by the Upper Tribunal for a rehearing. Therefore the

case will be adjourned for a re-hearing after two months. We direct that the Home Office provide written submissions two weeks prior to the hearing detailing their arguments on whether the material shows that 20 years residence is made out or not. “

10. We accordingly set aside Judge Lewis’s decision.

11. Written submissions were made by the Home Office on 29 December 2023, in accordance with our directions, which disputed the appellant’s claim that the evidence demonstrated 20 years of continuous residence and asserted that little weight ought to be given to the recent letter from the appellant’s GP practice in relation to the name change.

12. The matter was listed for a resumed hearing on 3 January 2024. However the hearing was adjourned owing to the illness of counsel instructed for the appellant and was relisted for 19 February 2024, when it came before me.

### **Hearing for the Re-making of the Decision**

13. At the hearing Ms Wass made an application for the appellant to be treated as a vulnerable witness owing to his mental health issues, as confirmed in the medical reports which had been produced. The application was granted and the appellant was treated as a vulnerable witness, in accordance with the Presidential guidance, with appropriate reminders to Ms Isherwood for her cross-examination and advice to the appellant to request any breaks if needed. In the event, the appellant was content to proceed and did not need a break when offered to him.

14. The appellant gave oral evidence before me. He adopted his two witness statements, dated 1 June 2022 and 19 September 2023, as his evidence, and was then cross-examined by Ms Isherwood. He stated that he continued to take medication. The appellant was asked about a letter dated 2 March 2023 from Sandmere GP practice (page 77 of the consolidated bundle) which confirmed that Jamal Olayinka registered on their NHS list on 24 October 1995 and was previously registered as Fatai Salami, and that he had come to the surgery to change his name in their records. He was asked what evidence he gave to the GP at the time and he replied that he took the Deed Poll change of name deed and a police report and copy of his passport. The appellant said that he had been going to that GP since 1995 and had registered with his mother and step-father, using the name Salami as that was his step-father’s name. The GP had changed his name as they knew who he was as he had been going there for a long time. The appellant said that he entered the UK with a passport in the name of something like Rosha Mashula (he was not clear of the name), but the names he used were all his own name and not false names. In answer to my question he said that that name was the name given to him in Nigeria and that he then took his step-father’s name when he arrived in the UK. He did not accept that he had been in the UK illegally. When he entered the UK the passport used for entry was taken from him by the person who brought him here. That person had helped him with the application for entry which was made in Nigeria. He had tried, through his mother, to get his passport back as he wanted to go on a school trip in 1997 but he was unable to do so. The appellant said that he had not been working in the UK but was supported by his sisters and lived with them. He occupied his time by going to the British library and educating himself. He said that he was still with his girlfriend but she was currently in China.

15. Both parties made submissions.

16. Ms Isherwood submitted that the appellant was not a credible witness and his evidence was vague. There was no evidence to substantiate his claim to have entered the UK in September 1995, as confirmed in the GCID notes on 6 May 2015. When I referred Ms Isherwood to the respondent's decision of 4 June 2015 (page 105 of the bundle) and the confirmation at [14] that his residence was treated as commencing from the beginning of 2002, she accepted that she could not go behind that, but she submitted that the evidence only showed snapshots of when he was in the UK. She submitted that the only evidence which could possibly show 20 years of residence, the GP letter of 2 March 2023, suggested that it was simply accepted by the GP that he was same person using two identities, which made no sense. It was therefore not accepted that the appellant had demonstrated 20 years of continuous lawful residence and neither was it accepted that there were any significant obstacles to integration in Nigeria.

17. Ms Wass submitted that there was sufficient evidence to demonstrate continuous residence for over 20 years, either from 1995 or from the Secretary of State's starting point of 2002. The names used by the appellant were his own and he had not used a false identity. He had changed his name by deed poll. The main evidence linking the two identities was the GP letter of 2 March 2023. The appellant had tried his best to produce as much evidence as he could. Ms Wass then took me through the evidence, referring to evidence for every year from 1995 to the current date and she asked me to find that that demonstrated the relevant period of residence. The evidence to which she referred is attached to this decision as Annex 1.

## **Discussion**

18. The appellant's claim to have entered the UK in 1995 rests upon it being accepted that he is the same person as Fatai Salami. There is no evidence of his entry to the UK and, other than the evidence from his GP practice, Sandmere Practice, there is no evidence of his presence in the UK in his current identity of Jamal Olayinka until 2002. Judge Lewis did not accept that Fatai Salami and Jamal Olayinka were the same person, given the overlap in the two identities, the fact that there was evidence of Fatai Salami having attended appointments and receiving treatment after the time he claimed to have registered in his current identity (page 369), as well as the fact that there were significant gaps in the GP records.

19. The appellant now relies upon a letter dated 2 March 2023 from Sandmere Practice which shows that the practice accepted that he was the same person as Fatai Salami who had been registered on their NHS list in October 1995 but had subsequently produced a Change of Name deed in February 2012 showing his change of name. That is said to be consistent with the GP records which were before Judge Lewis, and which are in the name of Fatai Salami up to 2009 and in the name of Jamal Olayinka from 2010. As Judge Lewis observed, it is the case that, aside from a different date of birth which the appellant claims was an error, the entries coincide with each other in respect of the NHS number and appointments and medical treatment between 1995 and 1998 and from 2007 to 2009. The appellant claims that the letter of 2 March 2023 resolves any concerns Judge Lewis may have had arising from those records.

20. It was Ms Isherwood's submission that little weight could be given to the letter of 2 March 2023 as it is not clear what degree of scrutiny was given by the GP practice in accepting that Fatai Salami and Jamal Olayinka were the same person. The letter refers to the appellant having simply produced a police report in relation to his lost passport, and the Change of Name deed. The appellant claimed that the GP practice knew him well as he had been attending for years and so believed that both identities

were the same person. I have to agree with Ms Isherwood that it is unlikely that the GP surgery would change their records of his name on that basis. I also agree that the 2 March 2023 letter is not a particularly reliable source of evidence for accepting that the two identities were the same person for the reasons she gave and I note that there is little explanation as to why, if it was not until February 2012 that the appellant changed his name with the surgery, that their records for Fatai Salami end in 2009 and Jamal Olayinka was registered from 2010 (see page 379). Neither is there any proper explanation as to why, if the appellant changed his name by deed poll in 2011, there are a number of documents showing his current name being used in earlier years, from 2002. Indeed Ms Wass accepted that there was some inconsistency in the evidence in that regard, although she relied upon the appellant's evidence in his asylum interview (question 8 at page 254) that he only used the name Fatai Salami after 1995/96 for his GP records and at college.

21. In the circumstances I am not satisfied that the appellant has produced sufficiently clear and reliable evidence to show that he is the same person as Fatai Salami and I therefore do not accept that there is evidence of his presence in the UK from 1995.

22. Having said that, there is now evidence before me of Jamal Olayinka residing in the UK from 2002 which Judge Lewis did not have before him. Indeed, the respondent's decision of 4 June 2015 refusing the appellant leave to remain in the UK, at page 105 of the consolidated bundle, accepts at paragraph 14 that his residence was treated as commencing at the beginning of 2002. Although the respondent's submissions of 29 December 2023 disputed the appellant's claim in that respect (despite specifically confirming at paragraph 20 that the 4 June 2015 decision was still relied upon), Ms Isherwood quite properly accepted that she could not go behind that concession. That therefore essentially addresses the years 2002 to 2015. In addition, the documents referred to by Ms Wass, as listed at Annex 1, include sports certificates dating back to January 2002, following which there are documents including tenancy agreements, rent receipts, council tax bills and other documents for every year up until the current time. That evidence was not addressed by the respondent's submissions of 29 December 2023.

23. Whilst there may be some substance to Ms Isherwood's submission that the appellant was vague in parts of his evidence, the fact that he did not cross as an entirely believable and persuasive witness does not detract from the fact that there is documentary evidence of his presence in the UK covering every year since 2002. It may be, as Ms Isherwood said, that the appellant had no lawful basis for being in the UK, that he had at some point breached his reporting conditions and that he had evaded immigration control, but the fact remains that the immigration rules provide for such a person to be able to remain in the UK if they are able to demonstrate 20 years of continuous residence here, which he is now able to do. The respondent has not actively sought to remove the appellant despite having refused numerous applications made by him and as a result he has been able to prolong his stay here so that he is now able to meet the requirements of the immigration rules. Although at the time of the respondent's decision on 10 December 2020, the appellant had not evidenced 20 years of continuous residence, he has now done so and is now able to meet the requirements of the immigration rules under paragraph 276ADE(1)(iii). Given that the immigration rules are a reflection of where the public interest lies, and given that the respondent has identified no other reason why the public interest otherwise requires the appellant's removal from the UK, his appeal must succeed under Article 8. There was no suggestion by Ms Isherwood that there should be any other outcome in the event that the 20 years of continuous residence was demonstrated.

## **Notice of Decision**

24. The decision of the First-tier Tribunal having been set aside, the decision is re-made by allowing the appellant's appeal on Article 8 human rights grounds.

Signed: S Kebede  
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

22 February 2024

## **ANNEX 1: DOCUMENTARY EVIDENCE OF RESIDENCE**

### **1995**

Page 77: 2 March 2023 letter from Sandmere Practice confirming registration on 24 October 1995

Page 119: GP records for Fatai Salami DOB 18.5.1975 NHS No 630 164 0799: booster tetanus vaccination on 15 December 1995

Page 379: GP records for Jamal Olayinka DOB 18.4.1976 NHS No 630 164 0799: booster tetanus vaccination on 15 December 1995

Page 117: GP records for Fatai Salami DOB 18.5.1975 NHS No 630 164 0799: booster tetanus vaccination on 18 December 1995

### **1995/7**

Page 461: Fatai Salami. Enrolment on courses and completion of courses from 11 September 1995 to 5 July 1996 and from September 1996 to 4 July 1997 at Lambeth College.

### **1997**

Page 120: GP records for Fatai Salami DOB 18.5.1975 NHS No 630 164 0799: booster polio vaccination on 3 June 1997

Page 379: GP records for Jamal Olayinka DOB 18.4.1976 NHS No 630 164 0799: booster polio vaccination on 3 June 1997

### **1998**

Page 120: GP records for Fatai Salami DOB 18.5.1975 NHS No 630 164 0799: influenza vaccination on 12 October 1998

Page 379: GP records for Jamal Olayinka DOB 18.4.1976 NHS No 630 164 0799: influenza vaccination on 12 October 1998

### **1999**

Page 123: GP records for Fatai Salami DOB 18.5.1975 NHS No 630 164 0799: influenza vaccination on 12 October 1999

### **2000**

Page 123 and 368: GP records for Fatai Salami DOB 18.5.1975 NHS No 630 164 0799: prescription issued on 25 May 2000

### **2002**

Page 108 The respondent's decision of 4 June 2015 accepts residence from 2002

Page 143 Sports coach UK certificate for Jamal Olayinka 21 January 2002

Pages 138 to 142 Certificates and letters from the Football Association and Sports Coach UK issued to Jamal Olayinka in November 2002

### **2003**

Page 136 Letters and certificates from Coachwise and The Football Association issued to Jamal Olayinka in January 2003

Page 132 a P60 from Football in the Community for Jamal Olayinka for 2003/4

Page 325 a visa card receipt in the name of Jamal **Olas** for May/June 2003

Page 133 a rent deposit receipt for Jamal Olayinka dated 14 November 2003

Page 134 a tenancy agreement for Jamal Olayinka dated 13 November 2003

**2004**

Page 131 a letter from Swiss Cottage library dated 5 August 2004 in the name of J. Olayinka

Page 129 a tenancy agreement for Jama Olayinka dated 22 November 2004

**2005**

Page 128 a County Court claim form in the name of Jamal Olayinka dated 17 November 2005 for rental arrears

**2006**

Page 127 a High Court Enforcement letter in the name of Jamal Olayinka dated 4 July 2006

**2007**

Page 144 A council tax bill for J Olayinka dated 17 March 2007

Page 124 Rent receipt for J Olayinka dated 24 May 2007

Page 117 GP records for Fatai Salami DOB 18.5.1975 NHS No 630 164 0799: prescription on 11 April 2007

**2008**

Page 119 GP records for Fatai Salami DOB 18.5.1975 NHS No 630 164 0799: GP appointments in December 2008

Page 379: GP records for Jamal Olayinka DOB 18.4.1976 NHS No 630 164 0799: GP appointments in December 2008

**2009**

Page 119 GP records for Fatai Salami DOB 18.5.1975 NHS No 630 164 0799: GP appointment 23 March 2009

Page 379: GP records for Jamal Olayinka DOB 18.4.1976 NHS No 630 164 0799: GP appointment 23 March 2009

**2010**

Page 384: GP records for Jamal Olayinka DOB 18.4.1976 NHS No 630 164 0799: GP appointment 5 May 2010

**2011**

Page 81: GCID notes confirming application made by Jamal Olayinka on 1 August 2011

Page 78: Deed of Change of Name from Fatai Salami to Jamal Olayinka dated 17 October 2011

Page 187: letter from St Thomas' Hospital to Fatai Salami dated 26 July 2011, followed by a letter dated 6 December 2011 to Jamal Olayinka

**2012**

Page 77: GP letter of 2 March 2012 confirming that the appellant attended on 6 February 2012 to change his name.

Pages 86 & 87: GCID notes confirming contact from appellant's legal representatives and human rights application made on 9 May 2012.

**2013**

Page 328: Confirmation of application to be added to Register of Electors, in the name of Jamal Olayinka, dated 1 March 2013

Page 488: Certificate of Attendance at Fashion Drawing course, for Jamal Olas, dated July 2013

Pages 86 & 87: GCID notes confirming contact from appellant's MP 23 July 2013

Page 351: Solicitors request for the appellant to open a bank account, dated 29 November 2013.

**2014**

Pages 89 & 90: GCID notes confirming contact from appellant's legal representatives requesting permission for the appellant to work



Page 381: GP records for Jamal Olayinka DOB 18.4.1976 NHS No 630 164 0799: GP appointment 21 August 2014

**2015**

Page 177: HRs application made

Page 380: GP records for Jamal Olayinka DOB 18.4.1976 NHS No 630 164 0799: GP appointment 28 October 2015

Page 324: Immigration Health Surcharge payment made on 6 December 2015

**2016**

Page 98: GCID notes confirming appellant lodged an appeal on 30 September 2016

Page 315 correspondence from HMCTS requiring payment of a fee for his appeal

**2017**

Page 317 Notice of Hearing sent to appellant's address from HMCTS dated 26 July 2017

Page 98 and 452 confirmation of withdrawal of appeal on 6 September 2017

Page 93 GCID notes confirming long residency application made 14 November 2017

**2018**

Page 147: appellant's statement as a victim of hammer attack in November 2018

Page 100: GCID notes confirming appellant acting as litigant in person in judicial review claim, December 2018

**2019**

Page 318: HMCTS correspondence to the appellant advising him that permission was refused in his JR claim, dated 30 January 2019

Page 209: confirmation that the appellant attended a screening interview on 25 April 2019 and substantive asylum interview on 30 October 2019.

**2020**

Page 200: notification sent to the appellant from British Transport Police on 7 September 2020 to attend trial in relation to the incident in November 2018

Page 161: notice of appeal against the current decision

**2021**

Page 147: appellant's statement as a victim of hammer attack in November 2018, dated 26 May 2021

**2022**

First-tier Tribunal Hearing before Judge Lewis