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

Case No: UI-2023-004191

First-tier Tribunal No: HU/55916/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**
**On 24th of January 2024**

**Before**

**UPPER TRIBUNAL JUDGE PICKUP**

**Between**

**John Frederick Gabriele Campher**
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**
For the Appellant: Ms S Iqbal of Counsel, instructed by MBM Solicitors
For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

**Heard remotely at Field House on 23 January 2024**

**DECISION AND REASONS**

1. By the decision of the Upper Tribunal issued on 6.12.23, the appellant, a citizen of South Africa, has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal panel (Judges Parkes and Howard) promulgated 4.7.23 dismissing his appeal against the respondent's decision to refuse his application made on 13.3.22 for Leave to Remain (LTR) on family and private life human rights grounds either within the Immigration Rules or outside the Rules under article 8 ECHR.

2. The relevant background is that the appellant came to the UK as a visitor in 2002 and was later granted LTR as a student with leave expiring in 2003. He was thereafter an overstayer with no valid basis on which to remain in the UK. He made no attempt to regularise his immigration status until 2022. However, he claims a genuine and subsisting relationship with his partner from 2021.

3. In summary, the grounds for permission argued that the First-tier Tribunal materially erred in law by: (i) making inadequate or no findings as to the length of the appellant's residence; (ii) failing to put issues of deception to the appellant. It

is argued that the corollary of the finding that the appellant has not established continuous residence for 20 years is that he must have left the country and returned to the UK illegally but this was never put to the appellant, and amounted to procedural unfairness; and (iii) failing to make express findings in respect of EX1, given that the appellant's partner is 64, white, and has lived in the UK all her life and would be at risk of rape if she relocated to South Africa, so that the EX1 test ought to have been found to have been met.

4. Permission was refused by the Upper Tribunal on the second and third grounds, noting that the burden of proof was on the appellant to demonstrate 20 years' residence and that there was no evidence that the issue of risk of rape was raised at the First-tier Tribunal.

5. In granting permission on the first ground only, the issue of long residence, Deputy Upper Tribunal Judge Chapman considered it "arguable that the panel may have erred materially in law in their assessment of the evidence as a whole in respect of the Appellant's continuous residence, albeit that evidence was not abundant and consequently the panel may have erred in the adequacy of their reasons for not accepting that residence."

6. Having heard the helpful submissions of both representatives, I reserved my decision and reasons to be provided in writing, which I now do.

7. Ms Iqbal accepted that at the date of application, the appellant could not demonstrate 20 years continuous residence but she argued that by the date of the hearing the assertion that he had passed that milestone was a weighty matter relevant to the article 8 proportionality balancing assessment. She also argued that in the refusal decision the respondent had conceded continuous residence for a period in excess of 18 years and that therefore the findings at [25] of the decision went behind that concession.

8. It is first to be noted that at [16] the panel confirmed that all the evidence and submissions had been taken into account, even if not expressly referenced in the decision. As explained in Budhatkoki [2014] UKUT 00041 (IAC), "it is generally unnecessary and unhelpful for First-tier Tribunal judgements to rehearse every detail or issue raised in a case. This leads to judgements becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost." Having read the impugned decision with care, I am satisfied that the panel can be taken to have considered all of the evidence in the round, in the context of the whole.

9. I note that the argument of a concession in the refusal decision was not advanced at the First-tier Tribunal appeal hearing and forms no part of the grounds seeking permission or the grant of permission. Having read the refusal decision, I am not satisfied that any such concession was made or intended and certainly it did not feature amongst the matters canvassed in the decision. Mr Wain pointed out that no such concession was made at the First-tier Tribunal appeal hearing.

10. Having regard to the grounds as drafted, it is not entirely clear to me why permission was granted, given the observations in the grant of permission decision. All I can derive from the grant of permission is that it was thought arguable that the panel failed to provide adequate reasons for the findings as to residence.

11. At [24] of the decision, the panel did not accept that at the relevant date, the date of application, the appellant had been in the UK for a continuous period 20 years. His own account was that he had entered the UK on 4.12.02 and did not make his application for LTR until 13.3.22, putting him necessarily significantly short of 20 years continuous residence. At [25] the panel noted that there was "very little evidence" to demonstrate residence for a continuous period of 20 years. In the subsequent paragraphs of the decision, the panel noted the absence of evidence of utility bills or GP registration, which the panel considered could reasonably have been obtained. At [28] the panel noted the letters of support but found none corroborated the claim of 20 years' continuous residence.

12. In addition to the documentary evidence, the panel heard from the appellant, his partner, and a further witness. Another witness statement, that of Mr Rangel, who did not give evidence, asserted that he had known the appellant for 20 years and had employed him between 2005 and 2007, 'unofficially', or in other words illegally. Unarguably, little weight could be given to vague assertions by a person of questionable honesty who did not give oral evidence and who did not support the claim by any other evidence than his mere assertion. The findings are unimpeachable as they are entirely open on the evidence.

13. As stated above, Ms Iqbal argued that making a finding as to length of continuous residence was material to the proportionality balancing exercise under article 8. She also argued that had the appellant's representatives understood that there was no concession about the 18 year period being continuous, more evidence would have been adduced. I reject that second argument outright as I am satisfied there was no such concession and because it was for the appellant to put evidence before the Tribunal to prove his case.

14. Contrary to the assertions in the grounds, it does not follow from the challenged adverse finding that the corollary must be that the appellant had left the country and returned illegally. For example, he may have been continuously resident for 20 years but unless he could demonstrate that to be the case, he could not meet the requirements of the Rules. Neither do I accept the argument that it was incumbent on the panel to make a finding as to the appellant's actual length of residence. It was for the appellant to discharge the burden of proof and mere assertion and unsatisfactory supporting evidence is obviously insufficient. Furthermore, it was not for the Tribunal to rule out all alternative scenarios. Unarguably, the finding that the appellant had failed to demonstrate 20 years' continuous residence was entirely open to the First-tier Tribunal on the evidence and is more than adequately supported by cogent reasoning.

15. As to the asserted need for a finding as to the precise length of continuous residence for the purpose of article 8, I am satisfied that that could have made no material difference to the outcome of the appeal as under the heading of 'Article 8 balancing exercise' at [36(c)(iii)] of the decision the First-tier Tribunal accepted that the appellant had been in the UK for a "lengthy period". It seems to me that the appellant is trying to argue that because he met the 20 years by the date of the hearing, the appeal should have been allowed. I reject that argument as an apparent attempt to argue a 'near-miss'. If it is not a 'near-miss' argument, then the precise length and whether it was continuous does not make any material difference as the finding of a lengthy period is certainly more than sufficient for the purposes of the proportionality balancing exercise. In the circumstances, there is no merit in this argument, which was not raised in the grounds in any event.

16. I am satisfied that the findings set out in the decision were well within the range of findings open to the Tribunal and cannot be said to be perverse or irrational, or otherwise in error of law.

17. In the circumstances, the appellant has failed to demonstrate any error of law in the making of the decision of the First-tier Tribunal and this appeal must be dismissed.

**Notice of Decision**

The appellant's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands as made.

I make no order as to costs.

DMW Pickup

**DMW Pickup**

Judge of the Upper Tribunal
Immigration and Asylum Chamber

**23 January 2024**