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

Case No: UI-2023-005549
First-tier Tribunal No: HU/56714/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**
7th February 2024

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MOHAMED BEGGAH**
**(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the appellant: Ms A Ahmed, Senior Presenting Officer

For the respondent: Mr L Youssefian, Counsel, instructed by Addison and Khan Solicitors

**Heard at Field House on 5 February 2024**

**DECISION AND REASONS**

## Introduction

1. For the sake of continuity, I shall refer to the parties as they were before the First-tier Tribunal. Therefore, the Secretary of State is once again "the respondent" and Mr Beggah is "the appellant".

2. The respondent appeals with permission against the decision of First-tier Tribunal Judge Rose ("the judge"), promulgated on 22 November 2023 following a hearing on 21 November. By that decision, the judge allowed the appellant's appeal against the respondent's refusal of his human rights claim on 16 October 2021. That claim, made on 11 February 2021, was based on Article 8 and the appellant's claimed lengthy unlawful residence in the United Kingdom. On his case, he had come to this country illegally in 1997 and lived here ever since, albeit under the assumed name of Nacim Djemai. He relied on paragraph 276ADE(1)(iii) of the Immigration Rules (that is since been replaced by Appendix PL to the Rules, but it is common ground that it is the former provision which applies in this case).

3. The appellant had previously made an application for leave to remain on lengthy unlawful residence in July 2011. The refusal of that application was subject to an appeal. First-tier Tribunal Judge Cohen dismissed the appeal by a decision promulgated on 28 June 2012 (IA/09884/2012). In doing so, Judge Cohen did not accept that the appellant had been in this country since 1997, but did find that he had resided here between 2001 and 2012. No express finding was made to the effect that the appellant and Nacim Djemai were one and the same person.

## The judge's decision

4. The judge's decision is brief, running to only 10 paragraphs. It begins by posing the question of who precisely the appellant is: in effect, was he Nacim Djemai and how long had he lived in the United Kingdom? The judge made reference to the decision of Judge Cohen, noted the evidence

before him (both documentary and oral) and then set out in full paragraph 32 of SSHD v BK (Afghanistan) [2019] EWCA Civ 1358, which summarised the well-known Devaseelan guidance.

5. Paragraph 10 of the judge's decision reads as follows:

> "I have seen nothing in the evidence put before me that would cause me to depart from IJ Cohen's findings of 2012, namely that the Appellant has been resident in the United Kingdom since 2001. It follows that, at the point that the Appellant made his most recent application for leave to remain, he had been present in this country for a period of twenty years. Accordingly, his claim must succeed."

6. The appeal was allowed, presumably on the basis that paragraph 276ADE(1)(iii) was satisfied and therefore success would follow under Article 8: TZ (Pakistan) v SSHD [2018] EWCA Civ 1109.

## The grounds of appeal

7. The central thrust of the grounds is that the judge failed to provide adequate reasons for its conclusion on continuous residence. It is noted that Judge Cohen's findings were adverse to the appellant in terms of claimed residence between 1997 and 2001, and favourable only to the extent of the period 2001 to 2012. The grounds contend that the judge failed to explain why Judge Cohen's findings alone were sufficient for the ultimate conclusion reached. Finally, it was noted that the appellant's history of using false documentation and an alias were relevant to the assessment of the evidence as a whole.

8. Permission was granted, with the First-tier Tribunal noting the adverse findings made by Judge Cohen and the absence of a clear finding by him as to who Nacim Djemai was.

## Rule 24

9. The appellant did not provide a rule 24 response.

**The hearing**

10. at the outset of the hearing I raised the shortcomings of the respondent's composite bundle. As is (or certainly should be) well-known by now, the Upper Tribunal's new standard directions require the party appealing to it to provide a composite bundle which complies with the directions and the Presidential Guidance on Electronic Bundles, dated 18 September 2023. In the present case, the respondent had provided a bundle which complied in part. However, whilst the index contain hyperlinks to the relevant materials, the bookmarks (i.e. the links appearing on the left hand side of the screen when the document is opened in PDF format) were of no assistance at all: they did not take the reader to the beginning of each of the relevant items contained in the bundle itself, particularly in relation to Part A (the basic materials essential to the error of law issue: the judge's decision, the grounds of appeal, the grant of permission).

11. I considered whether this non-compliance required explanation from the respondent, whether in writing or by an appearance in person before me on another occasion. In the event, I concluded that this would not be appropriate. Having said that, Ms Ahmed assured me that she would pass on my observations to those with responsibility for preparing the bundles. I have no reason to doubt that this will indeed occur.

12. I put the respondent on notice that continued non-compliance, even where this is partial, is likely to result in further action being taken.

13. In terms of the substance of the case, Ms Ahmed relied on the grounds of appeal and emphasised the point that the appellant had needed to prove continuous residence in this country between 2012 and the date of his latest application in February 2021. The judge had failed to make any clear findings on the core issues and/or had failed to provide any adequate reasons for his conclusion that the appellant had resided here continuously all the way through until present day. She relied on the adverse findings made by Judge Cohen in 2012 relating to the use of false HMRC documentation and the claimed residence from 1997 to 2001.

14. Mr Youssefian submitted that a brief decision did non-not necessarily mean that it was erroneous. He placed reliance on the decision in Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) for the proposition that reasons need not be extensive. He submitted that the documentary evidence before the judge had been comprehensive and covered the period 2012 to 2020. It was in the name of Nacim Djemai and it was clear enough that Judge Cohen had indeed accepted that this person was in fact the appellant. Given that the judge had appeared to accept the documentary evidence, it followed that paragraph 10 of his decision represented an acceptance of the necessary continuous residence.

15. In the alternative, Mr Youssefian submitted that the documentary evidence had not been challenged by the respondent at the hearing (there had been no Presenting Officer) and, on the basis of that evidence, the judge would have been bound to have accepted the appellant's case on residence.

16. In reply, Ms Ahmed submitted that despite the absence of a Presenting Officer at the hearing below, the respondent had challenged the appellant's case and evidence throughout, including the original reasons for refusal letter and the review. In addition, the judge had been required to go beyond the findings of Judge Cohen in 2012 and make his own clear findings, supported by adequate reasons, on the later evidence.

17. At the end of the hearing, I reserved my decision.

## Conclusions

18. I make two initial observations. First, I must read the judge's decision sensibly and holistically and exercise appropriate restraint before interfering with it. Secondly, a brief decision does not necessarily mean that it is erroneous in law: appropriate brevity is often commendable.

19. Having said that, what is required in a decision will of course be case-specific and will depend on, for example, the nature of the issue(s) in play, the extent of the evidence, and any procedural history which might have a material bearing on the determination of the appeal. As regards the provision of reasons, what was said in Shizad is, with respect, right: “reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge.”

20. Having had regard to the above, I have concluded that the judge did materially err in law and his decision must be set aside. My reasons for that conclusion are as follows.

21. Judge Cohen’s findings on residence were both mixed and limited. The claimed residence between 1997 and 2001 was rejected: paragraph 19. The accepted residence encompassed 2001 to 2012 only: paragraph 19.

22. It is also the case that Judge Cohen did not in fact make an express finding that the appellant and Nacim Djemai were one and the same person. Having said that, there is force in Mr Youssefian’s submission that such a finding is implicit in Judge Cohen’s analysis and overall conclusion.

23. Taking the points in the two preceding paragraphs together, Judge Cohen’s findings were indeed a starting point for the judge, in line with the guidance in Devaseelan. Yet that was all they were. There was clearly a good deal of new evidence relating to residence. Although there had been no Presenting Officer at the hearing (something I find to be particularly unfortunate given the issues in the case), it is clear that the respondent had disputed the appellant’s claim over time, including at the pre-hearing review stage. In my judgment, the judge was required to make findings and provide reasons (both of which need not have been particularly extensive) on the later evidence relating to the claimed residence between 2012 and 2021. Paragraph 10 of his decision does not, on its face, include findings or adequate reasons.

24. The first sentence of paragraph 10 states the judge’s view that there was nothing to justify him from departing from Judge Cohen’s

findings. However, as I have explained above, the core issue in the case was not simply a matter of "departing" from previous finding, but concerned the need to consider subsequent evidence, taking the mixed and limited findings from 2012 as a starting point. The use of the word "depart" in paragraph 10 suggests to the reader that the judge was taking Judge Cohen's findings as a complete answer to the issue of residence between 2012 and 2021.

25. Mr Youssefian's put up a valiant case in order to try and salvage the judge's decision by urging me to look at the underlying evidence and, in effect, reading in certain aspects of the necessary decision-making process which did not appear on its face. It is right that there was a good deal of documentary evidence which had been clearly presented to the judge in a schedule. That documentary evidence was in the name of Nacim Djemai and, as discussed earlier, it may well be that that person was indeed the appellant.

26. The insuperable difficulty with Mr Youssefian's position is that it involves too much work by way of filling in gaps in the decision, the drawing of inferences, and the use of implied findings and/or reasons. For example, one would have to infer that the judge accepted as a fact that the appellant was Nacim Djemai, that the relevant documentary evidence had been deemed reliable, that matters adverse to credibility had been, and that the residents had been found to be continuous.

27. In my judgment, the judge's findings are, in the circumstances, inadequate. Insofar as the respondent grounds of appeal focus on reasons, these too are legally inadequate. To the extent that there are any, they appear to rely solely on Judge Cohen's 2012 findings.

28. In short, the decision as a whole does not make sufficient sense to the reader. It might not have taken very much more for the judge's decision to have been unassailable, but, with respect, in this case its brevity has led to legal error.

29. I reject Mr Youssefian's submission that any error is immaterial. As I have said before, despite the absence of a Presenting Officer, the

appellant's evidence was disputed by the respondent. There were adverse aspects in relation to the appellant's credibility. It cannot be said that the underlying evidence before the judge meant that it was inevitable that the same outcome would have been reached but for the error is I have identified.

30. It follows that the judge's decision must be set aside.

## Disposal

31. I agree with Mr Youssefian's suggestion that if the judge's decision were to be set aside, remittal would be the appropriate method of disposal. There needs to be a complete re-hearing of the appellant's case and it is right that that should take place in the First-tier Tribunal. The findings of Judge Cohen will be a starting point for the next judge.

32. Whilst it is a matter for the respondent, I might suggest that a careful review of all of the evidence is undertaken sooner rather than later. It *may* be that if a view is taken that the appellant is indeed the same person as Nacim Djemai, the claimed lengthy unlawful residence acquires greater strength.

## Anonymity

33. There is no basis for making an anonymity direction in this case and I do not do so.

## Notice of Decision

**The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.**

**I exercise my discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 and set aside the decision of the First-tier Tribunal.**

**I remit the case to the First-tier Tribunal.**

**Directions to the First-tier Tribunal**

1. **This appeal is remitted to the First-tier Tribunal (Taylor House hearing centre) for a complete re-hearing;**
2. **The remitted hearing shall not be conducted by First-tier Tribunal Judge Rose;**
3. **The First-tier Tribunal will issue any further case management directions deemed appropriate.**

**H Norton-Taylor**

**Judge of the Upper Tribunal**

**Immigration and Asylum Chamber**

**Dated: 6 February 2024**