UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

THE IMMIGRATION ACTS

Heard at: Field House
On: 4 September 2013

Decision Promulgated:
On: 10 September 2013

Before

Upper Tribunal Judge Pitt

Between

Secretary of State for the Home Department

Appellant

and

Souhil Laib

Respondent

Representation:

For the Appellant: Mr Tufan, Senior Home Office Presenting Officer
For the Respondent: Not present

DETERMINATION AND REASONS

The Appeal

1. For the purposes of this appeal I refer to Mr Laib as the appellant and the Secretary of State as the respondent, reflecting their positions before the First-tier Tribunal.

2. The appellant is a citizen of Algeria and was born on 24 July 1983.

3. The respondent appeals the decision promulgated on 3 July 2103 of First-tier Tribunal Judge Miles and Dr J O de Barros which allowed the appellant's appeal against deportation.

Background

4. The appellant has an appalling immigration history. He came to the UK as a visitor in August 2002 but overstayed. He was arrested in 2003 in connection with terrorism offences. He gave a false name when arrested. In the event, he was only charged with four counts of fraud and in 2004 was convicted and received a sentence of 12 months. The respondent wished to deport him but in 2008 the appellant won his appeal on protection grounds as his (false) name had been linked to terrorism. The appellant then informed the respondent of his relationship with a British national with whom he claimed to be living after having undergone an Islamic ceremony in 2003. In 2011 he admitted his real name. He then informed the respondent of his relationship with a French national, an Islamic marriage having taken place on 26 February 2011 and a son being born on 25 August 2012.

5. Having learned of the appellant's true identity, deportation action was recommenced. The appellant accepted that he could not rely on the outcome of the previous deportation litigation as it was founded on his having given a false name and his real identity not being connected with terrorism. On 5 February 2013 the respondent notified the appellant of her decision to make a deportation order against him under s.3(5)(a) of the Immigration Act 1971.

Error of Law

6. I was satisfied that the decision of the First-tier Tribunal allowing the appellant's appeal against deportation, disclosed material errors on points of law.

7. Firstly, the respondent's refusal letter at [9] indicated that the appellant had breached his licence in 2006. This was relevant to his risk of re-offending but the First-tier Tribunal made no reference to it, stating at [7] only that the appellant had not re-offended since the conviction in 2004.

8. Secondly, the refusal letter stated at [44(c)] that the French partner was "exercising treaty rights" but by the time of the appeal before the First-tier Tribunal, as set out in a refusal letter dated 1 May 2013, the respondent had decided against issuing a residence card on the basis of false evidence having been provided regarding the partner's employment. The First-tier Tribunal note at [16] the different positions taken by the respondent but do no more than that. They do not find one way or another whether the couple had relied on false employment documents in the residence card application, a material matter in the proportionality assessment.

This was so even when the statement in the refusal letter that the partner was exercising Treaty rights was unevidenced and the later decision that she was not evidenced in some detail.

9. Thirdly, the Tribunal at no point consider the material factor of the knowledge of the appellant and his partner at the time that they formed their relationship that his immigration status was precarious.

10. Fourthly, in their proportionality assessment, the First-tier Tribunal do not at any point weigh the fact of the appellant's having been in the UK illegally since 2003.

11. Fifthly, and finally, the First-tier Tribunal's approach to the significant matter of his deception of the immigration and criminal authorities is perverse. The panel merely states at [9] that the deception "does him no credit" and then goes on to place more weight on the appellant having decided to reveal the truth 7 years later. They take no account of that deception being the only reason he has been able to build up the family and private life on which he now relies.

12. I was satisfied that these errors were such that the Article 8 proportionality assessment was unsound and had to be set aside and re-made.

Re-making of the Appeal

13. I proceeded to remake the appeal. I heard submissions from Mr Tufan, the appellant had chosen not to attend and having given an indication in a letter dated 8 August 2013 from his representatives that he wished the matter to proceed on the basis of written submissions only.

14. The decision of the First-tier Tribunal that the appeal under the Immigration Rules failed has not been cross-appealed and stands.

15. I accept that as regards the second stage Article 8 assessment, the answers to the first four *Razgar* questions must be answered in the appellant's favour and so only proportionality falls for me to assess as regards the appellant's family and private life and that of his wife and child.

16. I commenced by considering the best interests of the appellant's son. Those best interests son are undoubtedly that the appellant remain living with his son and his mother. The deportation of the appellant to Algeria, leaving the partner as a single parent and the child to grow up without his father, is a significant matter, one that can only have a seriously detrimental effect on the future life of any child. The best interests of the child must be weighed as a primary consideration and I so weigh them.

17. Also weighing in the appellant's favour is the fact of his having lived in the UK for 12 years and the private life built up during that time. In addition to his family life with his son, he formed a relationship with his current partner, a French national, in 2011 and the relationship continues. The appellant has not been convicted of any further crimes since 2004, a significant period of time, but that cannot be taken as a factor going entirely in his favour as he was recalled on licence in 2006. I accept that the risk of reoffending is very low given that there are no further substantive offences since 2004.

18. I could not identify any other factor going in the appellant's favour. He has committed criminal offences which attracted a sentence of imprisonment of 12 months and that must be weighed against him. As above, his immigration history is appalling and can only but weigh heavily against him. He has remained in the UK from 2003 onwards unlawfully. He lied to the authorities, both criminal and immigration, about his identity. He relied on that lie to fight deportation, telling the truth only years later. He has been able to remain in the UK as long as he has only because he told that lie. He has family members in Algeria to whom he can look for some support on his return.

19. Further, the appellant was only able to form his current relationship because he had told that lie and thus avoided deportation or removal at an earlier time. He formed his current relationship when he knew that his immigration status was precarious. I had recent evidence in the form of the refusal letter dated 1 May 2013 before me which indicated that the appellant and his wife have relied on false documents to try to show that the wife is exercising Treaty rights. I had nothing to show that they have appealed that decision. The matters set out in the letter are cogent. A telephone call to the purported employer established that the telephone number provided was unobtainable. The website for the company was said to be under construction. It stated that the company sells footwear and clothing and is a clearance stock buyer. The contract of employment provided, however, suggested that the company was involved in investment and was not signed by the appellant's partner. I was satisfied that the appellant and his wife had provided false documents in order to try to show that the partner was exercising Treaty rights. That further attempt deception must weigh against them in the proportionality assessment.

20. Put simply, there is too much weighing against this appellant for even the best interests of the child and the appellant's long residence and relationship with his current partner to make his deportation disproportionate. His history is such that this is a case where the disruption of the family, even though this inevitably means a mother having to bring up a child alone and a child growing up without his father, remains proportionate.

21. The appellant's wife is in the UK and can care for his son. She can also continue to do so in France as she and the child are French nationals. No issue arises under Case C-34/09 *Ruiz Zambrano.* That case establishes only that where a child is a British citizen and therefore a citizen of the European Union, as a matter of EU law it is not possible to require the *family* as a unit to relocate outside of the European Union or for the Secretary of State to submit that it would be reasonable for them to do so. Where, however, one parent remains because he or she is also an EEA national, the removal of the other parent does not mean that the child will be required to leave, thereby infringing the *Zambrano* principle; see C-256/11 *Murat Dereci*.

22. The letter from the appellant's representatives suggests that an assessment under the EEA Regulations 2006 should take place. I do not agree. As above, the evidence before me is that the appellant and his partner have submitted false evidence in order to show that the wife is exercising Treaty rights. There is no reliable evidence to show that she has ever done so. Where that is so, the appellant is not entitled to have his case considered under the EEA Regulations.

23. For all of these reasons, I found that the appellant's appeal against deportation brought under Article 8 of the ECHR must fail.

Decision

24. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside.

25. The appeal is re-made as refused.

Signed: Date:
Upper Tribunal Judge Pitt