IAC-AH-DP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/00672/2014

THE IMMIGRATION ACTS

Heard at Birmingham Sheldon Court	**Determination Promulgated**
On 27th July 2014	**On 3rd November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR ABDALLAH RAMADHAN SAID
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No legal representation
For the Respondent: Mr N Smart (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge North promulgated on 13th March 2014, following a hearing at Stoke-on-Trent on 6th March 2014. In the determination, the judge dismissed the appeal of Abdallah Ramadhan Said. The Appellant applied for, and was granted,

permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Tanzania, who was born on 10th October 1975. He entered the UK on 6th September 1994 as a visitor. He then overstayed and applied for asylum on 23rd July 1995. This was refused on 10th April 1997. The refusal notice was served on him on 15th June 1998. The Appellant then made further representations in 2010 and these were refused on 9th December 2013. It is against that refusal, that there is now an appeal.

The Appellant's Claim

3. The Appellant's claim is essentially based upon his Article 8 rights. He claims that he has a private life on account of having lived in the UK for nineteen years. He was a teenager when he came to the UK and is now 38 years of age. He had grown up in Tanzania. In the UK he had formed a relationship with a woman and her child but they had now separated. His case was that he had developed a strong private life by virtue of residence, relationships, and friendships and he was more accustomed to the way of life in the UK now than in Tanzania, that he would find it very difficult to resettle (see paragraph 5).

The Judge's Findings

4. The judge found that, notwithstanding the Appellant's claim, no witnesses attended the hearing to support his claim. There were no letters written in support of him. Although he claims to have lived in the UK all these years, he still spoke the local language in Tanzania and the judge held that he had continuing ties to his country of origin (paragraph 9). The Appellant claimed he had a partner and that the partner had a daughter and grandchildren but he was not the father of any of the children (paragraph 10). The judge held that there were no exceptional circumstances (paragraph 11) such that would require the judge to consider the situation on the basis of Article 8 ECHR rights, given that he could not succeed under Rule 276ADE of the Immigration Rules. The appeal was dismissed.

Grounds of Application

5. In his grounds of application, the Appellant relied upon the case of **Edgehill [2014] EWCA Civ 402** where it was held by the Court of Appeal

recently that, although a person, who cannot show twenty years residence in the UK, cannot come under the current Immigration Rules of paragraph 276ADE, nevertheless, if he had made his application, before the coming into force of the current Rules, then he would be able to point to the fact that he had lived in the UK for fourteen years, and this could properly be taken into account in his favour under the "long residence policy".

6. On 1st May 2014, permission to appeal was granted on the basis that the First-tier Tribunal Judge did not take into account the judgment of the Court of Appeal in **Edgehill**, because it was not handed down until April 2014, whereas the determination of the judge was promulgated on 13th March 2014. The failure of the judge to consider the issue of fourteen years residence constitutes an arguable error of law.

7. On 19th May 2014 a Rule 24 response was entered to the effect that **Edgehill** did not alter the position because the Appellant was not prejudiced by the Secretary of State considering the circumstances in respect of Appendix FM and paragraph 276ADE, even though the Appellant made his application on 16th May 2013.

Submissions

8. At the hearing before me on 27th July 2014, the Appellant, who appeared in person, read out from a letter, which he claimed had been prepared for him by the British Red Cross, copies of which he handed up both to the Bench and to Mr Smart who appeared on behalf of the Respondent Secretary of State. He explained that he had been in the UK since the age of 19 years of age and was now approaching almost 40 years. He had made his fresh claim application in May 2012 on the basis of fourteen years residence in the UK. The case of **Edgehill** fell to be considered in his favour. He should be granted indefinite leave to remain because he complied with the fourteen year long residence Rule in the Home Office Policy. He is a person of good character and he had a strong claim to remain in the UK on the basis of the government's Legacy Programme anyway.

9. For his part, Mr Smart submitted that the fourteen year Rule was now included in paragraph 276(B) of HC 395. However, the Appellant had been sent a notice of removal in 1998, following the rejection of his asylum claim in 1997. This meant that the clock stopped at this stage. Second, the Appellant had not offered any evidence that he had been in the UK continuously since his arrival as a 19 year old in 1994. Third, if the Appellant had been in this country for that period of time, then in September 2014, next month, he would have been in the UK for twenty years and he could properly apply under the Immigration Rules of paragraph 276ADE and succeed in showing Article 8 human rights grounds under the Immigration Rules themselves.

Error of Law and Remaking the Decision

10. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside this decision and remake the decision. My reasons are that although the case of **Edgehill** had not been promulgated by the Court of Appeal until a month after the determination of the judge was promulgated, nevertheless, it was the applicable law to consider the application of the "fourteen year Rule" in cases where that application had been made before the current Immigration Rules came into effect. In the Appellant's case, his application was made on 16th March 2013. In the refusal letter of 9th December 2013, it is stated (see last paragraph at page 5) that, "at the time of writing, you have been resident in the UK for nineteen years, having arrived on 26th September 1994 as a visitor. It is acknowledged that in the time since you arrived you will have developed a limited private life". The relevant paragraph goes on to explain that although the Appellant's asylum claim was rejected on 10th April 1997, and that he subsequently appealed that decision, he then withdrew his appeal on 17th September 1998 and his appeal rights were exhausted on 24th April 1997. The refusal letter then adds that,

> "You should have voluntarily left the UK at the very latest on 17th September 1998 when you withdrew your appeal. Instead you remained in the UK illegally. You did not commence regular reporting to the Home Office until March 2012".

11. There is no mention here of any notice having been sent to the Appellant that he was subject to removal. All that is said is that he should have left well and truly at the latest on 17th September 1998. That being so, I conclude that the Appellant stood to benefit from the fact that he had been in the UK for fourteen years. It was recognised in the refusal letter itself that he had been in the UK for nineteen years in any event.

12. In coming to this conclusion, I have taken into account the findings of the original judge, the evidence before him, and the submissions that I have heard today. I take into account a number of circumstances in this regard. First, the Appellant has been in the UK for nineteen years. Second, he is a person of good character and there is nothing before me to suggest that he is not. Third, the case of **Hakemi [2012] EWHC 1967** suggested that under the Legacy Programme of the government a person should be granted leave if that person has been in the UK continuously for six years and the Appellant potentially stands to benefit from this provision. Fourth, the government's own Home Office long residence and private life guidance (dated 11th November 2013) states (at page 2) that,

> "However, a person granted an extension of stay following an application made before 9th July 2012 can still be considered under the Rules in force before that date. This means a person granted leave to remain on the basis of fourteen years residence in the UK can still be granted ILR once the requirements are met".

I find that the requirements have been met and that there is nothing to suggest that they have not been met for the grant of a right of residence on the basis of the Appellant had been in the UK for fourteen years. Accordingly, this appeal is allowed.

Decision

13. The decision of the First-tier Tribunal involved the making of an error on a point of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed.

No anonymity order is made.

Signed Date

Deputy Upper Tribunal Judge Juss 11th August 2014