



**Upper Tribunal
Immigration and Asylum Chamber**
IA/12034/2012

Appeal Number:

THE IMMIGRATION ACTS

Heard at: Birmingham
Promulgated:
On: 18 September 2014
September 2014

Decision

On: 24

Before

Upper Tribunal Judge Pitt

Between

Anton Apianai

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms Peterson, instructed by CK Solicitors

For the Respondent: Ms Peterson, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the determination promulgated on 9 August

2012 of First-tier Tribunal Graham which refused the appeal against the respondent's decision of 1 May 2012 to refuse leave to remain on long residence grounds under paragraph 276B of HC 395 (the Immigration Rules).

2. The appellant is a citizen of Surinam and was born on 17 February 1965.
3. The initial decision I have to make is to assess whether First-tier Tribunal Judge Graham erred in law in his determination refusing the appeal.
4. That decision falls to be made for a second time as in an order dated 16 May 2014 the Court of Appeal remitted the case having found that the decision promulgated on 13 September 2013 of Deputy Upper Tribunal Judge Sommerville disclosed an error on a point of law in failing to consider a Rule 15(2A) application to adduce evidence not before First-tier Tribunal Judge Graham.
5. It was my view that the determination of First-tier Tribunal Judge Graham disclosed a material error on a point of law even without my needing to decide whether the material that formed part of the 15(2A) application should be admitted.
6. The First-tier Tribunal found that the appellant had not shown long residence as there was a gap in his work records from 2004 to 2008, albeit the appellant provided invoices and other documents for the other material periods.
7. One of the alternative pieces of evidence that the appellant provided to show that he was living in the UK from 2004 to 2008 was a letter dated 11 May 2012 at G1 of his bundle. It was from a firm for whom the appellant had done contract work. It stated:
"I confirm that Mr Anton Apianai was contracted by KBA on a self-employed basis from November 1996 to April 2008."
8. The First-tier Tribunal considered this letter (and another written in similar terms) at [12]. Judge Graham found that the letter did not "confirm that the Appellant has not been outside the UK for 6 months or more." That was the only reason given for placing no weight on this letter.
9. In my judgement the First-tier Tribunal applied too high a standard of proof to this letter. On its face the letter confirms work and therefore residence in the UK between specified months. Where the writer of the letter takes months, not merely years, to be the appropriate

measurement or reference point, if there had been an absence of more than 6 months, the letter could be expected to have said so. The contents of the letter were consistent with the appellant's account. It did not appear to me to be a sustainable approach to find that the letter was without any probative value merely for failing to overtly specify that the appellant had not been abroad for more than 6 months.


10. That error then leads to another at [13]. The appellant's account of was also supported by a witness, Mr Kelleher, who attended the hearing before the First-tier Tribunal. His evidence was that it was his personal knowledge that the appellant had been in the UK continuously since 1998. He was the appellant's landlord. The appellant had been living in his property with him as his tenant continuously since 1998.
11. The only reason given for Mr Kelleher's evidence failing to attract weight was at [12] and is stated to be that there was "an absence of any documents between 2004-2008".
12. I have found above that the First-tier Tribunal was not entitled to discount the employment letter at G1. It follows that the judge erred in rejecting the evidence of Mr Kelleher merely because there was no documentary evidence to support his account. The letter at G1 was capable of amounting to that evidence. The materiality of Mr Kelleher's evidence and its capacity to alter the outcome of the appeal, was conceded by the judge at [13], where he states that it "appears to support the Appellant's claim that he has been in the United Kingdom continuously since 1998".
13. I did not find the other grounds of appeal had any merit. The First-tier Tribunal was entitled to place little weight on the evidence of Mr Slack at [14] where his account of when the appellant worked in Wolverhampton was not consistent with the dates given by the appellant for living in London with his wife.
14. I found, however, that the matters set out above concerning the employment letter and the evidence of Mr Kelleher amounted to errors on a point of law and were material to the outcome of the appeal. I therefore set aside the decision of the First-tier Tribunal and proceeded to remake the appeal.
15. It was my view that the evidence before me showed that the appellant met the requirements of paragraph 276B. The transactional documents showing his work record is complete other than for the period 2004 to 2008. Nothing before me indicated that the evidence

of Mr Kelleher as to the appellant living as his tenant from 1998 onwards was not reliable. It was consistent with the evidence of the appellant. It was supported by the letter at G1 confirming employment during this period. I found that letter to be clear and probative. I was satisfied that the appellant had shown that he had been continuously residence in the UK for a 14 year period. I therefore allowed the appeal.

16. I should also point out for completeness sake that the appellant had 7 witnesses present at the hearing before me ready to give evidence in support of his appeal and be cross-examined, all of them having provided statements or letters that were provided in support of the appeal before the First-tier Tribunal and contained in the appellant's bundle. Those witnesses included Mr Kelleher. In the event it was not necessary for the witness to give oral evidence but their attendance was a further indication of the strength of the evidence in support of the appellant's case.

DECISION


17. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside.
18. I remake the appeal, allowing it under the Immigration Rules.

Signed: 
Upper Tribunal Judge Pitt

Date: 23 September 2014

Fee Award

I make a full fee award where the appellant has won his appeal under the Immigration Rules.

Signed: 
Upper Tribunal Judge Pitt

Date: 23 September 2014