Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/13514/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 4 January 2016	**On 11 February 2016**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

MR ABDOUNE EL HADJ

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Simon Harding, Counsel, instructed by Kilby Solicitors LLP
For the Respondent: Mr S Staunton, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This appeal is not subject to an anonymity order by the First-tier Tribunal pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Neither party has invited me to make an anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) and I have not done so.

2. The appellant appeals against the decision of the First-tier Tribunal (Judge Edwards) dismissing the appellant's appeal against a decision taken on 25

February 2014 to refuse an application for indefinite leave to remain outside the Immigration Rules and to remove the appellant from the UK.

Introduction

3. The appellant is a citizen of Algeria born in 1962. He states that he entered the UK illegally in 1992 using a French ID card in a false name. In September 2000 his legal representatives wrote to the respondent to advise that he wished to claim asylum but no claim was made. On 4 August 2004 the appellant was included in his ex-spouse's application for an EEA residence permit but that application was refused on 24 November 2004. He then applied for indefinite leave to remain on 3 October 2013. He claimed to have established a private life in the UK, having worked in the same employment for 13 years and having paid taxes in the UK for 22 years. The appellant had no immediate family members in Algeria and no links to that country. He had married in Belgian citizen in 2003 but was divorced from her in 2011. He had a sister, brother in law and three nieces living in the UK.

4. The Secretary of State accepted the appellant's identity and nationality but rejected his account to have arrived in the UK in 1992 because his French ID card in a false identity was issued in 1994 and his Algerian passport was issued in Algeria on 3 August 1998 and contained a 1999 Schengen visa. The P60s and wage slips from 1992 to 2000 were issued in a false identity. The respondent did accept that the appellant had been resident in the UK since 2003 and had been in employment, albeit unlawfully. He was 51 years old and had not severed all ties to Algeria. He did not meet the requirements of the Rules.

The Appeal

5. The appellant appealed to the First-tier Tribunal and attended an oral hearing at Richmond on 9 October 2014. He was represented by Mr P Nathan of counsel. The First-tier Tribunal found that the appellant had an appalling immigration history and only seemed to exist under his true identity since about 2003 and it was impossible for him to establish on what date he actually commenced life in the UK. His sister may have conduced to his alleged arrival but even she was vague as to when that was. He did not meet the requirements of the Immigration Rules and there was nothing to allow him to succeed under the Human Rights Act.

The Appeal to the Upper Tribunal

6. The appellant sought permission to appeal to the Upper Tribunal on the basis that the First-tier Tribunal had erred in law by failing to determine whether the appellant had entered the UK in 1992 as claimed by the appellant, his sister and his niece. The sister came to the UK in 1994 as accepted by the respondent and could not have "conduced" to the appellant's arrival in 1992.

7. Permission to appeal was granted by Vice President Ockelton on 8 September 2015 following a successful application for judicial review of the earlier refusal of the Upper Tribunal to grant permission to appeal. Mr Justice Blake found that there was substance in the appellant's contention that the central issue in the appeal was whether the claimant had resided in the UK for more than 20 years before the respondent's decision in March 2014 and the judge did not decide that issue nor did he recite the evidence of the sister that was said by counsel to support entry some time before 1994.

8. In a rule 24 response dated 22 September 2015 the respondent submitted that the findings were open to the judge and all of the available evidence was considered.

9. Thus, the appeal came before me

Discussion

10. Mr Harding submitted that this was a 20 year rule case. There was a considerable bundle of evidence before the judge from 1992 and then 1995 onwards. The French alias was used from 1995 onwards. There were no findings of fact in paragraph 17 of the decision and that was immediately fatal. The judge should have considered the use of the alias and come to a rounded assessment of whether the appellant had been in the UK for 20 years. The judge failed to attach weight to the sister's evidence or the documents. The decision was flawed and the appeal should be remitted for a de novo hearing. The French ID document and the Algerian passport were in the appellant's bundle. There was a pay slip from 1992 at page 44 of the appellant's bundle. The 1994 point was addressed in the appellant's witness statement – he lost the original document and had a replacement false document sent to him. There was no presenting officer and therefore no cross examination. There were documents such as pay slips and P60s from 1998. There were no findings on the positive case made by the appellant.

11. Mr Staunton submitted that the judge applied the correct burden and standard of proof. The appellant could not discharge the burden of proof upon him.

12. I find that the central issue in this appeal is whether the appellant has proved that he had resided in the UK for at least 20 years as at the date of application and therefore met the requirements of paragraph 276ADE(1)(iii) of the Immigration Rules. There is a significant amount of witness and documentary evidence relating to that issue. I find that the judge failed to engage with that evidence and make findings upon the key areas of dispute. Paragraph 17 of the decision (see paragraph 5 above) is extremely unclear and does not include a finding as to when the appellant did arrive in the UK or whether he met the 20 year rule. Nor are there any clear findings regarding the evidence of the sister and niece. There is no attempt to engage with the documentary evidence. Overall, I find that the

failure to make clear findings on the evidence or to give adequate reasons amounts to a material error of law.

13. That does not necessarily mean that the appellant's appeal will succeed. The issues raised at paragraph 3 of Mr Justice Blake's judicial review decision will need to be addressed by the parties at the rehearing and clear findings of fact are required from the First-tier Tribunal.

14. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of an error of law and its decision cannot stand.

Decision

15. Both representatives invited me to order a rehearing in the First-tier Tribunal if I set aside the judge's decision. Bearing in mind paragraph 7.2 of the *Senior President's Practice Statements* I consider that an appropriate course of action. I find that the errors of law infect the decision as a whole and therefore the re-hearing will be de novo with all issues to be considered again by the First-tier Tribunal.

16. Consequently, I set aside the decision of the First-tier Tribunal. I order the appeal to be heard again in the First-Tier Tribunal to be determined de novo by a judge other than the previous First-tier judge.

Signed  Date 6 February 2016

Judge Archer
Deputy Judge of the Upper Tribunal