



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/10968/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 19 July 2017**

**Decision and Reasons  
Promulgated  
On 11 October 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BAGRAL**

**Between**

**KIHAL NABIL  
(ANONYMITY NOT DIRECTED)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss B Joshi, Legal Representative instructed by A Bajwa & Co Solicitors

For the Respondent: Mr P Singh, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by Mr Kihal Nabil against the decision of First-tier Tribunal Judge G Andrews (FtTJ), promulgated on 12 April 2017, to dismiss the appeal against the Respondent's refusal of his application for leave to remain in the United Kingdom (UK) on human rights grounds.
2. The FtTJ based her decision upon the following factual matrix, which was not challenged by Mr Singh for the purposes of the instant appeal.
3. The Appellant is a citizen of Algeria born on 17 January 1974. He entered the UK on 24 December 1995 on a forged French ID card and claimed asylum.

On 14 April 1997 his asylum claim was refused, his subsequent appeal was dismissed and he became appeal rights exhausted by 14 July 1999. The Secretary of State reviewed her refusal of the asylum claim and affirmed her decision in 2014. A subsequent application lodged by the Appellant to remain in the UK on human rights was refused leading to a further application being made in December 2014, the refusal of which was the subject of the appeal before the First-tier Tribunal.

4. Before the FtTJ the Appellant argued that he had been resident in the UK for 21 years and thus qualified for leave on private life grounds under paragraph 276ADE of the Immigration Rules. In evidence the Appellant gave an account of his movements following his arrival and a witness - Mr Harper - confirmed that he had known the Appellant since 2002.
5. The FtTJ took into account supporting letters from persons purporting to know the Appellant, but noted that none of that evidence indicated that he had been resident in the UK continuously since 1995. The FtTJ further noted that Mr Harper had only known the Appellant since 2002. The FtTJ considered documentary evidence relating to the period between 2005 to 2008 and the incident of regular reporting to immigration officials since July 2015. The FtTJ was satisfied the Appellant had lived continuously in the UK from 24 December 1995 until July 1999 and since 2002, but she did not accept he had proven residence in the UK between 1999 to 2002. The FtTJ observed that there was a paucity of evidence relating to that period and the absence of witness testimony and stated, *"if the appellant genuinely lived in the UK between July 1999 and 2002, I would expect him to be able to produce some evidence of this"* [17].
6. The FtTJ further observed the concession made by the Appellant's representative that the Immigration Rules could not be met, given the Appellant had not lived continuously in the UK for a period of 20 years prior to the date of application as specified by the Immigration Rule itself and further observed that, as at the date of hearing, the Immigration Rules could not be met given her finding that residence had not been proven between 1999 to 2002. The FtTJ further concluded that there were no very significant obstacles to the Appellant's integration to Algeria on return and gave reasons at [23].
7. Having reached these conclusions, the FtTJ proceeded to consider Article 8 outside of the Immigration Rules - the focus being on private life. The FtTJ followed the step-by-step approach enunciated in Razgar and rightly observed that the appeal turned on the issue of proportionality. The FtTJ had regard to the public interest and weighed into the balance factors on both sides at [30] to [32] and concluded that no compelling reasons had been shown to warrant a grant of leave outside of the Immigration Rules. Accordingly, the appeal was dismissed.
8. Permission to appeal against the decision of the FtTJ was granted *"on the strength of the first ground the second ground is also arguable (not alone)"*, following a renewed application to the Upper Tribunal. I shall consider them in turn.

9. The first ground is that the FtTJ made an unsustainable finding by holding that, for the purposes of calculating whether the Appellant met the threshold for engagement of paragraph 276ADE of the Immigration Rules, she erred in concluding that residence had not been proven between 1999 to 2002. The grounds suggest that the FtTJ failed to consider that the Appellant could not have left the UK absent a passport and that during that period a civil war was raging in Algeria. It is further suggested that the FtTJ *“failed to attach weight to the Appellant’s credibility”* and *“failed to give weight to the fact that there is no evidence as to the contrary of the appellant’s residence throughout his entry from 1995 until present”* (sic).
10. I confess that Ground one is not entirely easy to follow. Miss Joshi (who is not the author) attempted to elaborate upon it in her skeleton argument and oral submissions. In amplifying the grounds Miss Joshi submitted that the FtTJ’s decision was unreasonable. She criticised the FtTJ for failing to reach credibility findings or failing to attach weight to the Appellant’s evidence, and she argued that it was not open to the FtTJ to rely solely on a lack of documentary evidence for the relevant period. She finally submitted *“on instructions”* that the FtTJ incorrectly referred to the Appellant reporting from 2008 rather than 2007.
11. I consider that Ground one without expressly saying so is a thinly veiled irrationality challenge. Essentially what is being argued is, in my view, a mere disagreement with the FtTJ’s findings and conclusion.
12. I deal with Miss Joshi’s last point, first. It has not been shown by reference to the evidence that the FtTJ was mistaken in stating that the Appellant had been reporting from 2008 and, in any event, if she was, the error is not material. While the FtTJ is criticised for not expressly stating her conclusion on credibility, it is plain given the FtTJ’s factual findings that she accepted some of the Appellant’s evidence; rejected some of it and gave adequate reasons for doing so that were entirely open to her on the evidence at [17]. It does not necessarily follow that the FtTJ was bound to accept the Appellant’s evidence on face value that he was resident in the UK from 1999 to 2002, solely because she accepted his earlier period of residence. There was some support of the latter by other forms of evidence and thus the FtTJ was entitled to note the absence of supporting evidence in respect of the former. It was a matter for the FtTJ to assess what weight to attribute to the lack of supporting evidence and it has not be shown that the FtTJ’s assessment was unreasonable or perverse.
13. The grounds further suggest that the Appellant could not have left the UK, but this fails to recognise that this is an Appellant who had access to false documents; the FtTJ was fully aware of the Appellant’s immigration history and the submissions made on behalf of the Appellant made no suggestion that he was unlikely to have returned to Algeria due to a civil war. In my judgement, the FtTJ correctly decided the appeal on the basis of whether residence in the UK for the requisite period had been proven. I am satisfied that the FtTJ’s decision is fully supported by the evidence and is not irrational or perverse. Accordingly, I find that Ground one is not made out.

14. The second ground briefly challenges the FtTJ's assessment of proportionality. It is expressly acknowledged that this challenge is dependent on the first ground succeeding, which I have found does not. Nevertheless, the issue of proportionality was considered in detail by the FtTJ and she gave cogent and sustainable reasons for answering it adversely to the Appellant. I am also satisfied that it was reasonably open to the FtTJ to conclude that there were no additional factors that were sufficiently compelling to merit consideration outside of the Immigration Rules; the Article 8 assessment was properly conducted and the relevant factors considered.
15. I therefore conclude that the FtTJ did not err in law. I thus exercise my discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 not to set it aside.

**Notice of Decision**

The appeal is dismissed.

Signed

Date: 18 September 2017

Deputy Judge of the Upper Tribunal Bagral