Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/17697/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13 March 2018	**On 26 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR OMAR LAIFA
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Ms A Everett, Home Office Presenting Officer
For the Respondent: Mr C Lam of Counsel, instructed by David Tang & Co

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Sweet promulgated on 28 November 2017, in which he allowed the 'human rights' appeal of Mr Omar Laifa.

2. Although before me the Secretary of State for the Home Department is the appellant and Mr Laifa is the respondent, for the sake of consistency with the proceedings before the First-tier Tribunal I shall hereafter refer to Mr Laifa as the Appellant and the Secretary of State as the Respondent.

3. The Appellant is an Algerian national born on 1 November 1974. It is his case that he entered the United Kingdom in the summer of 1994 – when he would have been approaching his 20th birthday. He claims that he has remained here ever since, having assumed the identity of one Jamel Hammeri, a French national born on 1 August 1967. The Appellant claims that he has been in various employments making use of that identity throughout the time that he has been in the UK.

4. The Respondent necessarily has no record of the Appellant's entry to the United Kingdom. The Appellant does not deny that he entered the United Kingdom in an identity other than his true identity, and says that he came here from France, having spent some time in France after departing from Algeria.

5. There is, however, some record of the Appellant's presence in the United Kingdom in his current identity – Omar Laifa - by way of two criminal convictions. The first of these is dated 11 April 2007 when the Appellant was convicted of possessing a false or improperly obtained identification document at Woolwich Crown Court and sentenced to six months' imprisonment. On 26 January 2011 he was again convicted of possessing a false or improperly obtained identity document at Camberwell Green Magistrates' Court. In relation to that latter event it is also apparent that on 25 January 2011 he was served with an IS.151A document as an illegal entrant.

6. Notwithstanding these convictions and the issuing of documentation as an illegal entrant, it is the Appellant's case that he not only then remained in the United Kingdom but he also again continued to masquerade under a false identity and worked accordingly.

7. It is against this background that the Appellant made an application on 1 March 2016 for leave to remain in the United Kingdom. The application was made by way of form FLR(LR) and supported by a covering letter from his representatives and a number of supporting documents. Those documents included statements from a number of individuals who declared their knowledge of the Appellant, that he had been in the United Kingdom for significant periods of time and that they knew him to be making use of the Hammeri identity. For example, the witness statement of Mr Nouri Boudjenah dated 6 February 2016 states at paragraph 3: *"I confirm that I know Mr Laifa as Mr Omar Laifa, Mr Jamel Hammeri and Mr Djamel Hammeri."* It is also stated in this statement at paragraph 5: *"In my opinion, Mr Laifa is a trustworthy person and has fully integrated into our society."*

8. The other supporting witness statements are in essentially similar terms, each referring to knowledge of the Appellant in the current identity (Omar Laifa) and two versions of the Hammeri identity, and each declaring the Appellant to be a trustworthy person in the opinion of the deponent. The documents include two supporting witness statements from each of the

Appellant's brothers. One brother, Mr Mourad Laifa, refers to the Appellant as being *"honest"* as well as being a reliable and polite character. Similarly, the statement of the other brother, Mr Farouk Laifa, makes the observation that the Appellant *"had always been of honest, reliable and polite character"*.

9. Before going any further it seems to me that on its face it is very difficult to reconcile the contents of each of these statements. I struggle to see in circumstances where each deponent was apparently aware of the Appellant's assumption of different identities that each could opine to the effect that he was an honest and trustworthy person. More particularly, it is not readily understandable without further exploration on what basis the Appellant's brothers were able to describe him as 'honest': it seems to me that before reaching a conclusion that such opinions were genuinely held it would be necessary to establish whether it could realistically be suggested that they had no idea or understanding as to why a different identity had been assumed – i.e. it would have been incumbent on the Appellant to establish that they had no idea that he was using a different identity in order to obtain employment in circumstances where he had no basis to be in the United Kingdom. Necessarily evaluation of such matters impact upon the weight to be accorded to these various supporting statements.

10. Be that as it may - and I will return to these observations in due course - the Respondent refused the Appellant's application for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 8 July 2016.

11. The Respondent noted the fact of the Appellant's previous convictions and also noted that they had not been mentioned on the application form. It was a matter of considerable debate before the First-tier Tribunal as to whether or not those convictions were in fact 'spent'. Ms Everett, on behalf of the Respondent, now acknowledges that they were indeed spent.

12. In this regard I pause to note that the grounds of appeal to the First-tier Tribunal at paragraph 5 pleaded that the Appellant did not disclose the convictions because he thought the convictions had been spent. However, in his evidence before the First-tier Tribunal he said something quite different. At paragraph 12 of the Decision of the First-tier Tribunal it is recorded that the Appellant gave evidence to the following effect. *"He was concerned that his solicitors would not take the case for him if they knew of his convictions and that is why he denied having any convictions at section E of the application form."* It may be seen that there is a discrepancy between: electing not to provide information in the application on the basis that it was considered not required because the convictions were thought to be spent; and not informing representatives, and in turn not providing information on the application form, because of a concern as to the consequences of revealing the convictions.

13. In any event, the Respondent considered to the Appellant's application pursuant to the Immigration Rules with particular reference to paragraph 276ADE(1). The Respondent was not satisfied that the Appellant met the suitability requirements under the Rules. In this regard both paragraphs S-LTR.1.6 and S-LTR.2.2(b) were invoked. In respect of S-LTR.1.6 the decision letter records: *"Your presence in the UK is not conducive to the public good because you have used multiple aliases during your time in the UK."* With regard to paragraph S-LTR.2.2(b) this was raised on the basis of the failure to disclose the convictions. As I have said, it is now acknowledged by the Respondent that those convictions were indeed spent - accordingly the focus on that particular basis of refusal is no longer critical or crucial.

14. The Respondent was otherwise not satisfied that the Appellant had established twenty years' continuous residence in the United Kingdom, and accordingly concluded that he did not satisfy the requirements of paragraph 276ADE(1)(iii). In this regard the Secretary of State said this:

> *"None of the evidence you have provided as evidence of 20 years continuous residency is in the name shown in your passport and you have not provided an official identity document issued to you to show that you were ever legally known by the name of Jamel Hammeri. Therefore it is not accepted on the basis of the evidence submitted that you have lived continuously in the UK for at least 20 years. Consequently you fail to meet the requirements of paragraph 276ADE(1)(iii) of the Immigration Rules."*

Implicit in this is the Respondent's marginalisation or rejection of the reliability of the supporting statements from family and friends.

15. The Respondent went on to consider paragraph 276ADE(1)(vi) but found that the Appellant did not satisfy this requirement either. It was noted that the Appellant had spent a considerable period of time in Algeria before leaving, including in particular his formative years, and it was considered that he would still have strong social and cultural ties to assist in his integration into life there. The Respondent otherwise found that there were no exceptional circumstances in the case to warrant leave notwithstanding the failure to satisfy the requirements of the Rules.

16. The Appellant appealed to the IAC.

17. On appeal the Appellant submitted a bundle of documents of 207 pages, which for the main part comprised evidence of employment of somebody with the identity of Jamel Hammeri. The Appellant also provided a smaller bundle, which included a witness statement, a few further documents, and a selection of case law. The Appellant was supported in his appeal by the oral testimony of one of his brothers and one of his friends.

18. The First-tier Tribunal Judge allowed the appeal for reasons set out in the 'Decision and Reasons' of the First-tier Tribunal.

19. The Respondent sought permission to appeal, which was granted by First-tier Tribunal Judge Chohan on 8 January 2018. Judge Chohan considered that it was arguable that Judge Sweet's reasoning was inadequate in respect of his favourable finding with regard to residence of twenty years in the UK, and in respect of there being significant obstacles to the Appellant's reintegration into Algeria.

20. A Rule 24 response has been filed on behalf of the Appellant under cover of letter dated 6 March 2018. Mr Lam has also provided a written argument in opposition to the Respondent's challenge.

21. For clarity: I note that one aspect of Mr Lam's written argument seeks to characterise the grounds pleaded by the Respondent in support of the application for permission to appeal as submitting that the Judge had given *no reasons* for his conclusion in respect of the length of time the Appellant had been in the UK, rather than *no adequate reasons*. I reject that distinction. It seems to me perfectly clear that the grounds of appeal were raising an issue as to adequacy of reasons, in particular it being stated at paragraph 3 of the grounds that the Judge *"needed to provide clear reasons"*. Moreover, the basis of the grant of permission by Judge Chohan was *"In short, the judge has not given adequate reasons for the findings made"*.

22. The First-tier Tribunal Judge rehearses the background to the appeal in his opening paragraphs, and then goes on to deal with the nature of the hearing and the submissions at paragraphs 9-15. The Judge's findings are to be found at paragraphs 16-19.

23. The key findings that are the subject of challenge are twofold:

    (i) *"I am satisfied, based upon the strength of the evidence, both documentary and witness evidence, that he has indeed been in the UK for over twenty years …"* (paragraph 16). (This is taken forward to paragraph 18 where the Judge states that in such circumstances the Appellant has met the requirements of paragraph 276ADE(iii).)

    (ii) *"In the alternative, he should succeed under paragraph 276ADE(iv) because there would be very significant obstacles to his being reintegrated into Algeria on his return to that country."* (paragraph 18).

24. Further to the above I also note that at paragraph 19 the Judge gives consideration to Article 8 of the ECHR *"In the alternative"*, and stating that he would have allowed the appeal under Article 8 *"because in my view it would be wholly disproportionate for the Appellant to return to Algeria, taking into account the strength of his connections and private life in the UK and the length of his stay in the UK"*.

25. It is convenient to note at this point that the 'alternative finding' in respect of Article 8 should not have been an alternative finding at all – and it is concerning that the Judge so characterised it. This was a human rights

appeal. It was only in respect of Article 8 that the Appellant could have advanced his 'private life' based claim. Whilst an analysis of the case against the Rules might properly inform an outcome under Article 8, the ECHR ground was in no way supposed to be an alternative or subsidiary basis of challenge to the Respondent's decision. The very brief contents of paragraph 19, which indeed only amount to a single sentence, are the only part of the decision where the Judge expressly addresses Article 8, and thereby the only part that expressly evaluates the available basis of challenge.

26. Be that as it may, in respect of the evaluation of the factual matrix I have no real hesitation - despite the able submissions of Mr Lam - in concluding that the Judge's reasoning fell well short of what is adequate on the key issue in the appeal with regard to the length of time the Appellant has been in the United Kingdom. Moreover, in respect of paragraph 276ADE(vi) no reasoning is offered by the Judge at all beyond the bare statement that the requirements of the Rule were met. Indeed, there is nothing discernible in the Decision by way of exploration as to what might or might not inhibit the Appellant's integration into the country of his nationality.

27. Yet further, as alluded to above, the Article 8 'alternative' consideration at paragraph 19 is wholly inadequate. In particular there is no reference to section 117B of the Nationality, Immigration and Asylum Act 2002 at all. It was suggested by Mr Lam that such public interest considerations might have in effect been undertaken notwithstanding the failure to identify the statutory provisions by name, but I find that I am unable to identify from the Decision on what basis the public interest in maintaining effective immigration control was given due regard, and I am unable to identify on what basis the Judge evaluated the provisions that says that private life established at a time when a person's status is precarious or unlawful is to be accorded little weight (section 117B(4)(a) and (5)).

28. As regards the Judge's findings in respect of the Appellant's presence in the United Kingdom for 20 years, and the satisfaction thereby of paragraph 276ADE(iii), it seems to me that the reasons - which go no further than the sentence quoted above from paragraph 16 - are not adequate.

29. This was a complex case which required a careful and nuanced consideration of evidence, and thereafter a clear and transparent explanation of the basis upon which it was considered that such evidence should be accepted. Given the history that I have rehearsed, which as I have indicated includes two previous convictions for dishonesty by using false identities, it seems to me that the First-tier Tribunal Judge needed to be particularly circumspect in evaluating the Appellant's evidence. In order for the dissatisfied party – the Respondent - to understand the basis of the outcome, it was incumbent upon the Judge to explain with adequate clarity why an individual who had at least twice been convicted of using

false identities, and on his own case had lived a life of utter deception in that his entire claimed working life in the UK was achieved by assuming a different identity, should be considered to be a witness of truth. In this regard the Judge does not seem to have identified the difficulties inherent in the supporting witness statements to which I have referred above - which, on the one hand, acknowledge that the Appellant used different identities and yet advance the Appellant as a trustworthy person. Something far more by way of reasoning was required by way of explanation of what weight could be attached to the supporting testimonies and why.

30. More particularly, the Judge does not articulate the key question in this appeal or express any reasons for any findings on the key question.

31. The key question is inevitably this: did the Appellant, and if so, at what point, assume the Hammeri identity for the purposes of work? That required something by way of considering what it was in the evidence that linked the Appellant to the use of the Hammeri identity.

32. In this regard it seemed to me surprising that neither the Appellant nor the Respondent had produced any materials in respect of the earlier convictions. On the Appellant's part, if those convictions had been in relation to the use of the Hammeri identity that would have tended to confirm his claim that he had been using the identity for a long period of time. On the Respondent's part, if those convictions had been in respect of one or more different identities, that is to say, identities different from the Hammeri identity, then that would have undermined the Appellant's claim to have been using the Hammeri identity throughout.

33. It is not beyond the realms of possibility that the Appellant assumed the Hammeri identity at some point considerably after his claimed entry to the United Kingdom in 1994. For example, it may have been assumed after his conviction in 2011. It is not beyond the realms of possibility equally that the Appellant simply bought a collection of documents accumulated by an individual called Hammeri at some point approaching his application and simply then presented himself as having worked under that identity.

34. So, as I say, it is crucial to see what might have been in the evidence that supported or linked the Appellant to the Hammeri identity. Beyond the Appellant's own assertions, and the testimonies of his friends and brothers, Mr Lam directed my attention in this regard to only two documents.

35. The first is a document that appears in the smaller of the two bundles that was before the First-tier Tribunal. It is a letter from T.T. Accountancy Services of 632 Old Kent Road purportedly signed by Thomas Tai Faturoti. The letter is dated 22 October 2017 and in its entirety is in these terms: *"I can confirm that Mr Jamel Hammeri is my client and I signed the back of the picture as the true picture of him. Thanks. Thomas Faturoti"*. There is

then a photograph appended to the document and a photocopy has been provided showing the back of the photograph signed by Mr Faturoti on 23 October 2017, saying *"this is to certify that this is the true picture of Mr Jamel Hammeri"*. The picture does indeed appear to be that of the Appellant. However, Mr Lam, not surprisingly, was at a struggle to identify anything in that letter that suggested that the Appellant had used the Hammeri identity at any point prior to the writing of that letter.

36. It was only after some very considerable further perusing of the larger of the two bundles that Mr Lam was eventually able to identify a second document which potentially linked the Appellant to the Hammeri identity via the testimony of Mr Faturoti of T.T. Accountancy Services. At pages 201-202 was a letter from T.T. Accountancy dated 27 October 2015 addressed to the Appellant. It is in general terms about a review of fees for the accounting year 2015 to 2016. There is nothing in that letter to suggest any sort of professional relationship between T.T. Accountancy and the Appellant that predates the letter of 27 October 2015.

37. Accordingly, the best that could be shown from the documentary evidence was a link between the Appellant and the identity that might be taken back to 2015 - that is to say a point very shortly before the current application was made. Necessarily, that does not demonstrate that the Appellant had been a person making use of the Hammeri identity at any point hitherto.

38. None of these matters explored in the preceding paragraphs - which, it seems to me, were at the core of the Appellant's case - are identified or articulated in the First-tier Tribunal Judge's reasoning.

39. In the circumstances in my judgement it is just plain unsatisfactory for the Judge to state in very general terms that the evidence was strong enough to persuade him as to the facts - that he was "*satisfied, based upon the strength of the evidence*" - without demonstrating the basis upon which he reached the evaluation as to the strength of the evidence.

40. The Judge clearly falls into further error in the consideration of paragraph 276ADE in that he fails completely to consider the suitability requirements of S-LTR.1.6. Whilst the Judge focuses upon the criminal convictions and the failure to disclose and the issue as to whether or not those convictions were spent, making findings essentially in favour of the Appellant - which are now no longer challenged - he does not seemingly give any consideration to the alternative suitability argument advanced in the RFRL: "*Your presence in the UK is not conducive to the public good because you have used multiple aliases during your time in the UK*". The issue of whether or not the convictions were spent does not impact upon that particular reasoning.

41. In the context of an Article 8 assessment, and in particular proportionality and bearing in mind the public interest in maintaining effective

immigration control to guard public interests, the issue of 'suitability' is potentially significantly pertinent. This is perhaps the more so in the circumstances here. Even if it were to be concluded that the Appellant has been in the UK for a protracted period of time, on his own case he has remained notwithstanding his convictions, continuing to assume - and obtain work pursuant to - a false identity. It seems to me particularly relevant - and should have properly been taken into consideration and articulated - that the Appellant not only did not learn his lesson after his first conviction but did not learn his lesson after his second conviction. Irrespective of whether his offences might be said to have been spent, in the context of suitability (to be included in a 'proportionality' balance), some evaluation should properly have been made as to whether he could be considered to be a person who had rehabilitated himself, or in circumstances where it is his claim that he has continued to masquerade under a false identity in order to secure work to which he would not otherwise have been entitled and therefore to secure pecuniary advantage by deception, he is habitually disrespectful of the law.

42. Again, such matters should all have been the subject of due and proper consideration and findings on the part of the First-tier Tribunal Judge. They were not, and this is yet further fatal to the decision of the Judge.

43. In all the circumstances the inadequacy of reasoning is such that the Decision of the First-tier Tribunal must be set aside. It is common ground between the parties that the decision in the appeal requires to be remade after a further hearing with all issues at large. Accordingly the appeal is to be remitted to the First-tier Tribunal.

44. The observations that I have made as to the nature and quality of the evidence should not in any way be considered to be binding on the next Tribunal. They are observations that seem to me to be appropriate to make on the basis of the materials that I have before me, in light of the fact that the First-tier Tribunal Judge did not explore such matters or if he did has not explained what he made of them because of the inadequacy of his reasons, and by way of demonstrating the nature and materiality of the deficiencies in reasoning. My observations do not constitute findings of fact. It will be for the Judge that remakes the decision ultimately to decide whether or not the matters to which I have alluded require further exploration and what, if any, weight might be accorded any consequent findings. Nonetheless, no doubt now that the Appellant is aware of such matters he will be in a position to seek to address them and to invite the First-tier Tribunal Judge on the next occasion to make what he or she will of these matters in light of his evidence and any further supporting materials that he might provide.

45. I also note again the potential value to one or other of the parties in having some more information as to the identity utilised in the circumstances that led to the convictions in April 2007 and January 2011. Any such evidence may be filed and served in accordance with the

standard directions that will no doubt be issued by the Tribunal in light of my decision herein.

Notice of Decision

46. The decision of the First-tier Tribunal contained material errors of law and is set aside.

47. The decision in the appeal is to be remade by the First-tier Tribunal by any Judge other than First-tier Tribunal Judge Sweet with all issue at large.

48. No anonymity direction is sought or made.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed: Date: 24 April 2018
Deputy Upper Tribunal Judge I A Lewis