



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/03082/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 6 November 2019**

**Decision & Reasons Promulgated  
On 4 December 2019**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**JKA  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Basharat

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

**DECISION AND REASONS**

1. The appellant was born in 1975 and is a male citizen of Ghana. He claims to have arrived in the United Kingdom in October 1999. The appellant has made a number of applications to regularise his immigration status culminating in an application for asylum July 2018. That application was refused by the Secretary of State by a decision dated 17 March 2019. The appellant appealed to the First-tier Tribunal which, in a decision promulgated on 9 August 2019, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. There are several grounds of appeal. The appellant claims that he is homosexual and that he is a real risk of ill-treatment upon return to Ghana. Judge did not believe his account and permission to the Upper Tribunal was granted by Judge Finch on the basis that the judge had failed to take account of the totality of the appellant's evidence relating to sexuality or to give sufficient weight to the fact that the appellant had only recognised his true sexuality after his marriage to his wife had broken down.
3. I find that there is some merit in the grounds concerning the judge's assessment of the credibility of the appellant's international protection claim but the appellant's strongest argument relates to his Article 8 appeal which was founded on his claim to have resided in the United Kingdom for more than 20 years. The judge accepted that the appellant had lived in the United Kingdom since September/October 2000 [28]. She did not accept that the appellant had arrived in 1999, as he claimed. As a consequence, she did not find that the appellant met the requirements of paragraph 276 ADE of HC 395 (as amended). Whilst the judge went on to find that the appellant could reintegrate into Ghanaian society and had skills as a trained vending machine engineer, she did not, in her assessment of the appeal on Article 8 grounds, consider the length of the appellant's residence in this country. I do not suggest that the judge should have approached this appeal on the basis of a 'near miss' under the rules but the length of the appellant's residence, albeit insufficient to satisfy paragraph 276, should still have featured in her overall assessment.
4. In the circumstances, I find that the judge's decision is flawed by legal error. I set the decision aside, preserving none of the findings of fact save that the appellant has resided in the United Kingdom since at least September/October 2000. There will need to be a new fact-finding exercise, both in relation to the appellant's international protection claim but also concerning his Article 8 appeal. It will be for the next Tribunal to determine when the appellant entered the United Kingdom and whether he has resided here continuously, as he claims, for more than 20 years.

### **Notice of Decision**

The decision of the First-tier Tribunal is set-aside. None of the findings of fact shall stand, save that the appellant has lived in the United Kingdom since September/October 2000. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing.

Signed

Date 22 November 2019

Upper Tribunal Judge Lane

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.