Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/08997/2019 (P)

THE IMMIGRATION ACTS

On the papers on 3 July 2020 **Decision & Reasons Promulgated On 20 July 2020**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MOURAD LOUDJANI
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

ERROR OF LAW FINDING AND REASONS

1. On 16 October 2019 First-tier Tribunal Judge Paul ('the Judge') dismissed the appellant's appeal on human rights grounds.

2. Permission to appeal was granted by a judge of the Upper Tribunal on a renewed application on 10 March 2020, the operative part of the grant being in the following terms:

> "The appellant's case was based on his long residency in the UK since April 2000. Given the importance of this issue to the appellant as well as the fact that the appellant produced 7 witnesses to support his claim, is arguable that the judge ought to have reached a clear conclusion as to the credibility of that evidence as well as the length and continuity of the appellants residence and given adequate reasons for the findings that he did."

3. The appeal was listed for an Initial hearing to enable the Upper Tribunal to establish whether the Judge had in law in a manner material to the decision to dismiss the appeal on 4 May 2020. As a result of the Covid-19 pandemic that hearing was vacated and directions sent to the parties indicating the Upper Tribunal was of the opinion the question of whether the Judge had erred in law and whether any error was material to the decision could be made on the papers, inviting a response from the parties within a stipulated period.

4. Both parties have made submissions the appellant's representatives in a letter of 12 May 2020 in which they confirm the appellant has no further submissions to make but requesting the Tribunal "in the interest of justice" to list the matter for a telephone hearing; claiming this was the last opportunity for the appellant to address his immigration case that he has been in the United Kingdom continuously for at least 20 years.

5. The respondent filed a reply dated 1 June 2020 written by Senior Home Office Presenting Officer commenting upon the grounds and confirming the Tribunals provisional view that it will be appropriate for the matter to be determined without a hearing.

6. The Overriding Objective is contained in the Upper Tribunal Procedure Rules. Rule 2(2) explains that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues.

7. Rule 2(4) puts a duty on the parties to help the Upper Tribunal to further the overriding objective; and to cooperate with the Upper Tribunal generally.

8. Rule 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008 provides:

> 34.—
> (1) Subject to paragraphs (2) and (3), the Upper Tribunal may make any decision without a hearing.
> (2) The Upper Tribunal must have regard to any view expressed by a party when deciding whether to hold a hearing to consider any matter, and the form of any such hearing.
> (3) In immigration judicial review proceedings, the Upper Tribunal must hold a hearing before making a decision which disposes of proceedings.
> (4) Paragraph (3) does not affect the power of the Upper Tribunal to—
> (a) strike out a party's case, pursuant to rule 8(1)(b) or 8(2);
> (b) consent to withdrawal, pursuant to rule 17;
> (c) determine an application for permission to bring judicial review proceedings, pursuant to rule 30; or
> (d) make a consent order disposing of proceedings, pursuant to rule 39, without a hearing.

9. It has not been shown to be inappropriate or unfair to exercise the discretion provided in Rule 34 by enabling the error of law question to

be determined on the papers in this case. The parties were given the opportunity to make submissions as to the method of hearing and to provide any further information they seek to rely upon. Nothing on the facts, in law, on the basis of the submissions that have been made that makes consideration of the issues on the papers not in accordance with overriding objectives at this stage.

10. Accordingly I exercise the discretionary power contained in Rule 34 to determine the question of whether an error of law material to the decision to dismiss the appeal has been made on the papers without further hearing.

Background

11. The appellant is a citizen of Algeria born on the 6 December 1964. On 22 February 2019 he made a human rights claim on the basis of long residence and private life which was refused on 28 March 2019.

12. The Judge sets out his findings from [9] of the decision under challenge. At [11] the Judge records that on the appellant's own evidence he made the application before he had completed 20 years residence in the United Kingdom and that the only basis on which he could succeed under the Immigration Rules will be in relation to showing significant obstacles if returned to Algeria. The Judge finds the appellant had not demonstrated this was the case. Whilst accepting that it will be hard under the circumstances there was nothing to demonstrate very significant obstacles that the appellant could not overcome.

13. The Judge went on to consider Article 8 ECHR and the question of whether exceptional circumstances had been made out sufficient to render any interference with the appellant's private life in the United Kingdom disproportionate. The Judge noted the appellant's claim relating to the period he has been in the United Kingdom and that he had established a close network of friends most of whom appeared to be of Algerian origin.

14. The Judge notes he was specifically invited by the appellant's representative to make a finding in relation to the period of residence in the United Kingdom but finds at [13] that the claim the appellant had never left the United Kingdom since he entered was still to be resolved, which is a clear finding the appellant had not adduced sufficient evidence to prove what he claimed in this regard was true.

15. At [14] the Judge finds he is not able to make a finding that it had been established to the requisite standard that the appellant had been in the United Kingdom for 19 years for the reasons set out in the decision under challenge. The Judge then consider section 117B noting the appellant has been in the United Kingdom unlawfully which warranted little weight being attached to his private life claim. The Judge thereafter finds the public interest is not outweighed by any interference, sufficient to warrant the appeal being allowed.

16. The appellants grounds assert the Judge erred in law on the basis the appellant had lived in the United Kingdom for a very long time and

that the Judge was required to make a finding either that the appellant had lived in the UK continuously for 19 years from 2000 in light of the oral evidence he heard or to make a finding that he had not lived in the United Kingdom for 19 years, in order to resolve conflict between the appellant and the respondent. The grounds assert the Judge failed to resolve such conflict.

17. The grounds also assert the Judge heard oral evidence from the appellant and 7 witnesses and accepted the appellant had lived in the UK "for a very long time" but failed to qualify what that term meant. The grounds assert the Judge failed to give reasons why he accepted the appellant had lived in the country for a very long time but then reverses his decision by finding documentary evidence had not been provided therefore finding it could not be made out that the appellant had lived in the United Kingdom for 19 years. The grounds assert the Judge failed to take into account material matters that there was no documentary evidence available as a result of which the oral evidence was relied upon.

18. The appellants grounds are set out in further detail in the pleadings of 21 February 2020.

Error of law

19. The grounds fail to establish arguable legal error material to the decision to dismiss the appeal.

20. The Judge clearly considered the evidence with the required degree of anxious scrutiny and has given adequate reasons in support of the findings made. The Judge was aware that he was being asked to make a specific finding the appellant has lived in the United Kingdom for 19 years from the year 2000 but the Judge did not find the appellant had discharged the burden of proof upon him to the required standard to show that this was so on the basis of evidence on which the Judge was able to attach appropriate weight.

21. The appellant's assertion that the Judge was required to make a finding that either the appellant had lived continuously in the United Kingdom for 19 years or had not lived in the United Kingdom for 19 years omits the further finding the Judge was entitled to make which is that the appellant had not proved that what he was claiming was true, i.e. that length of claimed residence had not been proved. This is the finding the Judge made and no arguable legal error arises in relation to this point on the evidence.

22. The appellant applied for leave to remain in the United Kingdom on the basis of long residence but as he had been in the United Kingdom without leave the only basis on which he could succeed was by establishing that he has completed 20 years and therefore met the requirements of paragraph 276ADE(iii) of the Immigration Rules. The Judge noted that on the basis of the appellant's own evidence the application was made for leave before he completed the required 20 years meaning he could not succeed by establishing the minimum

period of residence required. No arguable legal error is made out in the Judge so finding.

23. The Judge therefore correctly notes that whether the appellant was able to succeed under the Rules required the establishment of very significant obstacles to integration pursuant to paragraph 276ADE(vi) which had not been made out on the evidence. This is a finding clearly within the range of those available to the Judge which is supported by adequate reasons. The grounds do not specifically challenge the Judge's finding that no very significant obstacles are made out. Length of time in the United Kingdom, whatever that may be, is not sufficient to establish the same.

24. Having concluded the appellant was unable to succeed under the Immigration Rules the Judge considers Article 8 ECHR and in particular section 117B which he was lawfully required to do. The fact the appellant had remained in the United Kingdom "for a long period of time" is not a finding that he had lived for 19 years, as to some 10 Years may be a long period of time, and does not make any interference with private life established disproportionate per se. It is not time, but the nature/quality of any private life established during such time that is relevant. The Judge makes clear findings accepting that private life had been established but it was not made out that the Judge was required to apply any more weight than he did to this aspect in light of the statutory provisions.

25. The respondent in response to the directions refers to a claim in the appellants grounds that the decision places the appellant in the middle "limbo" position perpetuating the appellant's unregulated stay in the UK. This is interpreted by the author of the respondent's reply as a statement by the appellant that he has no intention of leaving the UK if his appeal is dismissed and is disgruntled because he wants to use a positive "19 years in the UK" finding for a future application. It is likely there is merit in such an interpretation.

26. Having considered the evidence, the decision, grounds of challenge, grant of permission to appeal, and subsequent submissions, I find that whilst the appellant does not like the decision and wishes to remain in the United Kingdom the grounds fail to establish arguable legal error material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in this matter. The decision is wholly within the range of those reasonably open to the Judge on the evidence. The findings are supported by adequate reasons and the weight to be given to the evidence was a matter for the Judge.

Decision

27. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

28. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson
Dated the 3 July 2020