Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/09727/2019

THE IMMIGRATION ACTS

Heard by Skype for business	**Decision & Reasons Promulgated**
On the 28 October 2020	**On 09 December 2020**

Before
UPPER TRIBUNAL JUDGE REEDS

Between
MOSES OLABODE LADEGBAYE

(NO ANONYMITY DIRECTION MADE)

AND

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Adeniran, Solicitor on behalf of the appellant
For the Respondent: Mr Diwnycz, Senior Presenting Officer

DECISION AND REASONS

Introduction:

1. The appellant appeals with permission against the decision of the First-tier Tribunal Judge Lawrence (hereinafter referred to as the "FtTJ") who dismissed

his appeal against the respondent's decision to refuse his human rights claim in a decision promulgated on the 2 January 2020.

Background:

2. The background is set out in the decision of the FtTJ and the evidence in the bundle. The appellant is a citizen of Nigeria. The appellant claimed to have entered the United Kingdom on 24 November 1994.

3. On 26 January 2010, the appellant made an application for leave outside of the rules. This was refused with no right of appeal on 10 November 2010. He submitted a pre-action protocol letter on 21 January 2011. The respondent's decision to refuse his application was maintained on 9 March 2011. He lodged an appeal on 29 March 2011 which he withdrew. His appeal rights were exhausted on 3 June 2011.

4. On 9 March 2011 he was served with a RED.0001.

5. He made a human rights claim in an application for leave to remain on the basis of his family and private life on 18 December 2018.

6. In a decision issued on 16 May 2019 the respondent refused that application. It was noted that he did not make reference to a partner or dependent children in the UK. Thus, his application was considered in respect of his private life.

7. As to private life, it was noted that he could not satisfy the provisions of paragraph 276ADE. It was noted that he claimed to have entered the UK on 24 November 1994 but that he had provided no evidence of his claimed entry into the UK and is not provided any evidence of the residence in the UK prior to 2003. It was therefore not accepted that he had lived continuously in the UK for at least 20 years and that he failed to meet the requirements of paragraph 276ADE (1) (iii) of the rules. As he was not aged between 18 and under 25 years he could not meet the requirements of paragraph 276ADE (1) (v) of the immigration rules.

8. As to paragraph 276 ADE (1) (vi) the decision letter noted that an applicant must show that they are aged 18 or above and that there would be very significant obstacles to their integration into the country to which they would have to go if required to leave the UK. In the appellant's case it was not accepted that there would be very significant obstacles to his integration to Nigeria if required to leave the UK taking into account his previous length of residence, including his childhood, formative years and a significant portion of his adult life, having retained his knowledge of life, language and culture and that he would not face significant obstacles in re-integrating in life there.

9. Under "exceptional circumstances" respondent considered whether there are any circumstances which would render refusal a breach of Article8 because it would result in unjustifiably harsh consequences for the appellant but on the evidence provided, it was considered that there were no such consequences.

10. As to his private life, it was considered that any private life or ties he had developed in the UK had been done with his full knowledge that he did not have permission to remain here permanently and had never been given any legitimate expectation of stay. As such, he should have prepared himself for the possibility of return to Nigeria. Whilst he may have made ties during his stay in United Kingdom, he had failed to demonstrate that those ties currently went beyond normal emotional ties.

11. It was further noted that there was nothing to prevent him exercising his right to private life in Nigeria. The Secretary of State had the right to control the entry of non-nationals into its territory and Article 8 does not mean individuals can choose where they wish to enjoy their private life when it can reasonably be expected of them to continue that private life elsewhere. It was further noted that he had already demonstrated his ability to adapt to life in another country, which on his arrival to the UK was a completely new environment to him. Given his ability to integrate into life in the UK, a country he had no knowledge or experience of it was considered that he would be able to reintegrate into the culture and way of life in his country of origin which was a country which had previously lived.

12. It was acknowledged that it may be initially difficult upon his return but there was no evidence of any exceptional circumstances which might prevent him from re-establishing his private life in Nigeria. He had already shown resourcefulness in obtaining work and establishing a private life in the UK in a country where we had no right to reside or work since his claimed entry of 24 November 1994. Any skills and experience gained can be used to support himself on return to Nigeria.

13. As to his claim to have family and friends in the UK, respondent considered that it was open to the family and friends to visit him in Nigeria or for him to apply for the appropriate entry clearance to visit friends and family in the UK. Any financial support from family and the UK could continue. Whilst the current economic situation in the country may be poor, the respondent was not satisfied that he would suffer any greater hardship than other people of that nation. His application was therefore refused.

14. The appellant appealed that decision, and it came before the FtT on 12 November 2019. The FtTJ dismissed the appeal in a decision promulgated on 2 January 2020.

15. Permission to appeal was issued and on 12 May 2020 permission was granted by FtTJ Grant-Hutchinson for the following reasons:-

> "it is arguable the judge has erred in law (i) by failing to give adequate and proper consideration as to whether there would be very significant obstacles to the appellant's integration in Nigeria if required to leave the UK in terms of paragraph 276ADE (1) (vi) of the Immigration Rules and (ii) by erring in his assessment of section 117B in inferring that the appellant is likely to rely on public funds in the future when there is nothing in the present circumstances to support that assertion.

The hearing before the Upper Tribunal:

16. In the light of the COVID-19 pandemic on the 23 June 2020 Upper Tribunal Judge Sheridan issued directions, inter alia, indicating that it was provisionally of the view that the error of law issue could be determined without a face to face hearing and that this could take place either on the papers or in the alternative via Skype.

17. The hearing took place on 28 October 2020, by means of *Skype for Business*. which has been consented to and not objected to by the parties. A face to face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. I conducted the hearing from court. The advocates attended remotely via video. Mr Adeniran had not been able to use his camera and therefore joined the hearing by telephone and was accompanied by the appellant. There were no issues regarding sound, and no other technical problems were encountered during the hearing and I am satisfied both advocates were able to make their respective cases by the chosen means.

18. There was a Rule 24 response filed on behalf of the respondent dated 7 July 2020. There were also written submissions submitted on behalf of the appellant sent on the 20 July 2020.

19. I also heard oral submissions from the advocates, and I am grateful for their assistance when giving their submissions.

20. Before the Upper Tribunal, Mr Adeniran relied upon the written grounds and the grant of permission which I have taken into account.

The grounds:

21. The written grounds assert that the FtTJ erred in his assessment of the applicant's case under paragraph 276ADE leading to an error in the determination. The judge had considered that the earliest date that has presence in the UK can be taken is from 2003. As such, in the alternative the grounds submit that the applicant satisfies paragraph 276ADE (1) (vi) of the rules as he was aged 51 years old and has resided in the UK for less than 20 years but that there would be "very significant obstacles" to his integration to Nigeria.

22. The grounds set out those reasons; that he has no family ties, support network or resources in Ecuador for him and that is only meaningful private life was established in the UK; if considering his claim from 2003 he lived in the UK for 16 years and the appellant had formed his own links within the community (AB 9-15). Finally, if comparing the time spent in Nigeria to the time spent in the UK, he spent the majority of his life in the UK and that he has not been to his home country and has lost contact with his homeland and as such this amounts to a "significant obstacle" the appellant reintegrating there.

23. The second ground asserts that the judge failed to give adequate and proper consideration to the appellant's case and surrounding circumstances under Article8 of the ECHR. The written grounds cite the well-established five stage structured approach under Razgar and submit that the appellant had established a private life in the UK given his lengthy residence and that it would be disproportionate in the circumstances and that he cannot be expected to return to a country he is not been to since 1994.

24. It is finally submitted that the judge erred in his assessment of section 117B as it relates the appellant's case. The ground state that the judge did infer that the appellant is likely to rely on public funds in the future when there was nothing in the present circumstances to support that assertion. The appellant was not relying on public funds and has no intention to do so. The fact that the appellants be things languish and the length of years he has been United Kingdom had also been a factor in the determination of his case.

25. In his oral submissions, Mr Adeniran relied upon those written grounds. He submitted that the appellant had no family ties in his country of origin and had established a private and family life in the UK having spent more than 20 years in the UK .He submitted that all the links the appellant had had been in the UK and that the judge did not take into consideration all the circumstances. He submitted that the judge should have taken a holistic view.

26. As regards ground to, he submitted that the section 117B public interest considerations had not been properly or adequately considered. As he had lived in the UK for over 20 years he established a presence in the UK and therefore a private life and had established himself as a law-abiding citizen. He submitted that it would be unjustifiably harsh bearing in mind that he had spent most of his life in the UK and that he had not left the UK since it entered. It was submitted that any interference would be unjustified and not in pursuit of legitimate means.

27. Mr Adeniran directed the Tribunal to paragraph 5 of the grounds (dealing with S117B) and that looking at the decision of the judge, he came to the conclusion that the appellant would be likely to rely on public funds when since he had entered he had not applied for any such funds. At the hearing he provided evidence of support from members of the local community and family who would continue to support the appellant and had done so since he entered the

UK. Thus there was no reason the judge to come to the conclusion that the appellant was likely to rely on public funds. The appellant could speak English and therefore the reliance upon public funds was an error. Mr Adeniran finally submitted that the appeal should be remitted to be heard afresh by another FtTJ.

28. Mr Diwnycz relied upon the rule 24 response. It was argued that the decision did not contain any errors of law such that it should be set aside. Whilst the first ground argued that the appellant met the immigration rules, the judge may clear findings that the date upon which he could first substantiate been United Kingdom was 2003 and gave cogent reasons based on the documentary evidence, the appellant's evidence, and letters of support. It was also stated submitted that it was incorrect to say that the appellant spent the majority of his life in United Kingdom. If he had been in the UK since 2003 had spent 35 years in Nigeria, compared to 16 years in United Kingdom.

29. As regards ground 2, it was submitted that the judge did not err in his assessment of whether the appellant might in the future have a claim on public funds. In his oral submissions Mr Diwnycz submitted that at paragraph 43 it was not clear whether the judge was in fact counting that issue against him.

Decision on error of law:

30. The question whether the Decision contains a material error of law is not whether another Judge could have reached the opposite conclusion but whether this Judge reached a conclusion by appropriately directing himself as to the relevant law and assessing the evidence on a rational and lawful basis.

31. I have considered the submissions made by the advocates in the context of the decision of the FtTJ.

32. The FtTJ's assessment of the claim can be summarised as follows.

33. The FtTJ began his assessment and considering whether at the date of his application he lived continuously in the UK for at least 20 years (discounting any period of imprisonment) or whether there were at the date of his application for leave to remain very significant obstacles to his integration in Nigeria.

34. The judge went on to consider the evidence in support of his long residence in the United Kingdom at paragraphs [27]-[31]. The FtTJ set out that evidence at [27] which included the contents of the application form, the letter from a church administrator stating that the appellant had attended the church since May 2014, letters to people stating that they know the appellant the various periods of time, letters and various businesses addressed to the appellant at an address in London and an undated witness statement and oral evidence.

35. At [28] the FtTJ considered the letters from the businesses as providing some support for his claim that he been resident in 2003, 2005, 2006, 2008 and 2009 and considered the appellant's explanation for him not being possible to provide evidence prior to 2003 as a result of the passage of time but also is a change of several addresses on several occasions. The judge however concluded that the changes of address given in the account given over the claim. Residents were not that many and that the reference to the passage of time did not adequately explain the lack of evidence of residence in the United Kingdom since 2009.

36. At [29] the FtTJ address the evidence set out in the letters from various individuals. The judge found that only four of the letters stated that they actually knew that the appellant was in the United Kingdom the time stated stop the other letters did not specify where the writer met or saw the appellant (save that one stated that the writer knew him at a local church for the locality is not specified). The judge went through that evidence but gave reasons as to why he could attach little or no weight to them. At [30] there was a letter from the church administrator but again the judge stated that it was lacking in anything "but the most basic details of the circumstances in which the writers claim to know the appellant, and neither the right of the letter nor any other representative of the church appeared as a witness at the hearing in order that their evidence could be tested, and no explanation was offered as to why they were unable to do so,". Thus the weighty could attach was minimal.

37. At [31] the FtTJ considered the appellant's witness statement to be inconsistent with his claim length of residence and gave reasons for reaching that conclusion. The judge also found the contents of the application was "lacking in the level of detail that would reasonably expect it to be provided by truthful applicant, including the lack of detail of the appellant's financial and accommodation circumstances, such as how much rent as accommodation, who lives with, and who is paying his rent stop". The judge also refers to "very little details added in his oral evidence".

38. He concluded that having considered the evidence "in the round" and on the balance of probabilities, he found that the appellant had not demonstrated that he had lived continuously in the UK for at least 20 years at the date of his application for leave to remain. The judge accepted that he resided in the UK from 2003 – 2009 and that he is present in the United Kingdom for his appeal that he did not accept that he had proved that he lived in United Kingdom at any other times.

39. At paragraph [35] the judge stated that he did not consider that the appellant had established that there would be very significant obstacles to his integration in Nigeria on the evidence that he had considered and that the respondent's reasoning in the decision letter was correct.

40. At paragraphs [36] – [49] the FtTJ set out his consideration of Article8 and the public interest by reference to s 117B.

41. At [37]-[38] the FtTJ stated that he did not accept that the appellant enjoyed a private life in the United Kingdom, even on the "relatively low threshold" that applied because "I do not accept that the appellant has resided in the United Kingdom at any times other than from 2003 to 2009 and that he is present in the United Kingdom for his appeal, and also the lack of anything but the most basic details of the appellant's claim life in United Kingdom or of any personal relationship that he claims to enjoy that country. He therefore found that the decision to refuse leave to remain was "not therefore a decision that interferes with the appellant's private life". However, the judge went on to consider it in the alternative and by reference to the public interest considerations set out within part 5A of the Nationality, Immigration and Asylum Act 2002 "the public interest question" which he set out at [40].

42. At [41] he stated that the immigration rules reflected the respondent's assessment as a general level of the relative weight to be given to individual factors in striking a fair balance and Article 8 (section 117B(1)) and went on to state that the appellant did not satisfy the requirements for grant of leave to remain in the United Kingdom and that this would "count against him in relation to the public interest question".

43. At [42] the FtTJ considered section 117B(2) and that the appellant appeared speak English to a reasonable standard but applying the decision of Rhuppiah v SSHD [2018] UKSC did not find that that was a consideration which would "propel a conclusion that there is a public interest in favour of his claim".

44. At [43] the FtTJ made reference to section 117B(3) in the context of the decision in Rhuppiah. The FtTJ stated; " there is an absence of a reasonable level of detail of how the appellant is and has been supporting himself in the United Kingdom and, although he may not have received financial assistance from the United Kingdom in the past, there is insufficient evidence on which could reasonably be found that it would not be a burden on the United Kingdom if he was permitted to remain in that country. Therefore, this public interest consideration would normally count against him."

45. At [44] the FtTJ considered sections 117B(4) (a) and S 117B(5) that provide that little weight should be given to a private life established by person at a time when the person's immigration status is unlawful or precarious. Anyone who, not being a United Kingdom citizen, is present in the United Kingdom and who has leave to reside here other than to do so indefinitely has a precarious immigration status for this purpose: (see Rhuppiah). The judge stated "the appellant has not claimed that any of his claim residence in United Kingdom has been lawful, therefore the consideration of sections 117B(4) (a) would appear to apply to all of his claimed residence, I would normally limit the

weight I can give to that private life in relation to the public interest question to the specified "little" weight.

46. At [45] the judge recorded that S117B(6) had no application to the appellant's case.

47. Having made that assessment he then turned to whether there were "any other considerations that are relevant to the public interest question" and made a self-direction to the decision in Rhuppiah and that "generalised normative guidance (that) may be overridden in an exceptional case by particularly strong features."

48. The FtTJ's assessment was set out at paragraphs [47]-[48] as follows:

"47. It is appropriate to consider that, whilst the public interest is not adversely affected by the appellant's English-language ability, it is legitimate to have regard to those factors as lending some minimal positive way to the strength of his private life (which is not to suggest that the relevant public interest consideration subsections of part five of the 2002 act propel a conclusion that there was a public interest in favour of their claim): see Rhuppiah at paragraph 57.

48. I also have regard to my findings in relation to the appellant's claim long residence in United Kingdom and it claimed personal relationships, and the factors relied on by the appellant and by the respondent in relation to whether there were or are very significant obstacles or exceptional circumstances such that refusal of the appellant's application would breach Article 8 of the Human Rights Convention. It is significant in my consideration that the appellant has claim that he has been able to secure employment in the United Kingdom and pay rent for accommodation, and I agree that he has not established that he would have any significant difficulty doing the same in Nigeria, which would enable him to support himself whether or not he has family in Nigeria and/or any friends or family the United Kingdom are prepared to continue to support him for any period of time on or after his return. The appellant has not given any reason as to why he could not continue similar religious activities to any such activity presently engages in in the United Kingdom."

49. Having reached his conclusions, he concluded that interference in the private life of the appellant was justified having regard to the public interest. He concluded that the decision under appeal was not unlawful under section 6 of the Human Rights Act 1998 and dismissed his appeal.

50. The grounds upon which permission was sought and granted do not expressly challenge the finding that he could not meet the Rules on the basis of his long residence of 20 years. If that were so, there would be proper particularisation by reference to the evidence. No particularisation was provided in oral submissions. What is challenged in ground 1 is the assessment of whether there were very significant obstacles to his re-integration. The points made by Mr Adeniran in his oral submissions is that the FtTJ did not take account of his

length of residence. The written grounds refer to him having lost ties to Ecuador. That must be an error as the appellant is a national of Nigeria and not Ecuador. He further submits that his only meaningful private life was established in the United Kingdom and that the appellant had formed his own links within the community and that he had lost contact with his home country and that this amounted to a "significant obstacle".

51. Mr Diwnycz relied upon the rule 24 response submitted on 7 July 2020. In that response it states that it was incorrect to say that the appellant has spent the majority of his life in the United Kingdom. The judge found that he was in the UK since 2003, the appellant therefore had spent 35 years in Nigeria compared to 16 years in the United Kingdom. As to consideration as to community links and United Kingdom, the judge had considered that that properly concluded that his private life is not sufficient for him to meet the rules.

52. In respect of paragraph 276ADE(1) (vi) and the issue of whether there were "very significant obstacles" to his reintegration to Nigeria the FtTJ made a self-direction to the meaning of "very significant obstacles" in the decision of Treebhawon v SSHD [2017] UKUT at [33] and at [34] the judge made reference to the decision of the Court of Appeal in Parveen v SSHD [2018] EWCA Civ 932 at paragraphs 33-34.

53. When considering very significant obstacles the assessment of integration is considered relevant and Sales LJ in the decision of the Secretary of State for the Home Department v Kamara [2016] EWCA Civ 2016 held that integration called for a:

"broad evaluative judgement to be made as to whether the individual be enough of an insider in terms of understanding how life in the society in that other country is carried on and the capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time variety of human relationships to give substance to the individual's private or family life."

54. The factual circumstances in the case of Kamara are different to the present appeal; that was a deportation appeal but the reference to a "broad evaluative judgement" is the necessary assessment to be made on all appeals when considering whether there are "very significant obstacles". The decision in Kamara refers begin to develop within a reasonable time a variety of human relationships to give substance to the individual's private or family life.

55. The FtTJ made a self-direction to the decision of *Parveen v SSHD* [2018] EWCA Civ 932.

56. In that decision the Court of Appeal accepted following Treebhawon, that the phrase "very significant" connoted an "elevated" threshold and

accepted the Upper Tribunal's view that the test was not met by "mere inconvenience or upheaval" (see paragraph 9 per Underhill LJ). The court went on, however, not to accept all that had been said in Treebhawon

"But I am not sure that saying that "mere" hardship or difficulty or hurdles, even if multiplied, will not "generally" suffice adds anything of substance. The task of the Secretary of State, or the Tribunal, in any given case is simply to assess the obstacles of integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether they regard them as "very significant".

57. The conclusions reached on that issue were considered on the basis of the findings of fact made by the FtTJ that the appellant had only demonstrated that he had lived in the United Kingdom from 2003 – 2009 and that he had been present in the United Kingdom for his appeal. The judge made it plain that he did not accept that he had proved that he lived in the United Kingdom at any other times. On that basis, it cannot be said that he had lived in the United Kingdom longer than he had in Nigeria. The submissions made on behalf of the appellant failed to take into account that finding which was relevant to the length of residence in the UK.

58. Furthermore the FtTJ set his reasoning out at [35] in which he stated that the appellant had not established that there would be "very significant obstacles to his integration in Nigeria on the evidence I have considered, and I consider that the respondent's reasoning in the decision letter is correct." Looking at those reasons which the judge agreed with and adopted as part of his reasoning again related to having spent a significant portion of his life in Nigeria. That finding was supported by the findings of fact made by the judge set out at paragraphs 27 – 32. That being the case, and contrary to the grounds, he had not spent more of his life in United Kingdom than in Nigeria. Having spent his childhood, formative years, and part of his adult life in Nigeria, the judge accepted that he would have retained knowledge of the life, language and culture in Nigeria and thus would not face significant obstacles to reintegrating to Nigeria.

59. Furthermore at [48] the FtTJ returned to that issue and considered his claim that he would not be able to re-establish himself in Nigeria. The judge found that that claim was contrary to his evidence that he had been able to secure employment in the United Kingdom and pay rent for accommodation and thus the judge concluded "he has not established that he would have any significant difficulty in doing the same in Nigeria, which would enable him to support himself whether or not he has family Nigeria. The FtTJ also found that any friends or family in the United Kingdom could continue to support him for any period of time on or after his return." As to any religious activities, the judge concluded no reasons were given as to why he could not continue this activities in Nigeria. At [47] the FtTJ noted that the appellant spoke English which is a language spoken in Nigeria.

60. On the basis of the evidence that was before the FtTJ, his rejection of the appellant's long residence claim for the reasons that he set out in his decision between the paragraphs 27 – 32, the finding made as to his length of residence, his continuing language and cultural links, the length of time that he had spent in Nigeria which included his formative years in part of his adult life, that he would be able to re-establish himself by employment and that he had support from the UK that he could rely upon, were all factors which the judge was entitled to take into account in reaching his conclusion. I am not satisfied that there is any error of law in his decision on the basis advanced on behalf of the appellant.

61. Dealing with the second ground, it is submitted that the judge failed to give adequate consideration to Article 8. The grounds cite the well-established five stage structured approach set out in the decision of Razgar. As can be seen from the decision at paragraphs 36 – 49, the FtTJ lawfully and rationally applied the assessment under Article 8 and expressly directed himself in accordance with the five- stage test. Whilst the grounds submit that he established a private life given his lengthy residence and that it would be disproportionate to expect him to return to a country he has not been to since 1994, that submission ignores the factual findings made by the judge as set out at paragraphs 27 – 32 where the judge firmly rejected his claim on long residence grounds. Whilst the judge at [37] stated that he did not accept that the appellant had enjoyed a private life given the lack of evidence to demonstrate residence other than from 2003 – 2009 and that he was present in the United Kingdom for the appeal, the judge also stated that "the most basic details of the appellant's claim life in the United Kingdom or of any personal relationship that he claims to enjoy in the country, was a further reason. It is plain that the judge was critical of the lack of evidence in support of any private life. However, at [39]the judge proceeded on the basis that even if there was an interference with his private life, the judge would be required to consider proportionality of removal and by applying the public interest considerations under Part 5A of the Nationality, Immigration and Asylum Act 2002 which he described as the "public interest question".

62. This brings me to the second part of the submissions made by Mr Adeniran. He submits that the judge erred in his assessment of section 117B. In particular by reference to paragraph [43] and the finding or inference made by the judge that the appellant was likely to rely on public funds in the future when there was nothing in the present circumstances to support that. Mr Adeniran submitted that there was nothing in the evidence to support that point.

63. I have considered the submissions made on behalf of the appellant in relation to the S117 factors set out in the decision. As the FtTJ set out at [41], he properly applied the law at [41] when addressing the test set out in Agyarko of "striking a fair balance under Article 8". Furthermore, with respect to Article 8, the Immigration Rules are the starting point for any consideration as they set out the position of the respondent in relation to a claim on private life grounds under Article 8. For the reasons given by the

FtTJ in the earlier part of the decision, the appellant could not satisfy the requirements for grant of leave to remain in the United Kingdom under the Rules. Therefore the judge was correct in stating that section 117B(1) applied and that the maintenance of effective immigration control was in the public interest.

64. The judges self-direction at [42] properly reflected the decision in Rhuppiah v SSHD [2018] UKSC 58 that whilst the appellant spoke English to a reasonable standard, that would not count against him in the public interest question however the property concluded that that did not "propel a conclusion that the public interest was in favour of his claim". The judge was entitled to note that that was a neutral factor.

65. As to the assessment of financial dependence upon the state, S117B(3) states that it is in the public interest and in the particular interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent because such persons, (a) not a burden on taxpayers and (b) better able to integrate into society. The FtTJ considered the evidence of the appellant and noted "there is an absence of a reasonable level of detail of how the appellant is and has been supporting himself in the United Kingdom and, although he may not have received financial assistance will United Kingdom the past, there is insufficient evidence on which could reasonably be found that he would not be a burden on the United Kingdom if he was permitted to remain in that country. Therefore, the public interest consideration would normally count against him."

66. Having considered the assessment of the evidence set out in the earlier paragraphs, the finding made that there was an "absence of reasonable level of detail" as to how the appellant had been supporting himself in the United Kingdom was one that was open to him. However, even if the judge had found that he was "financially independent" that was a neutral matter which did not militate positively in his favour in the scales of proportionality as set out in the decision of Rhuppiah at paragraph 57. The judge properly identified that the appellant had not claimed that any of his residence in the United Kingdom was lawful and thus attaching little weight that private life for those reasons. Section 117B(6) relating to having a parental relationship with a qualifying child did not apply on the circumstances of the appellant's claim. However, contrary to the grounds the judge did consider whether there were any other features of the appellant's case that might be relevant in the decision (see paragraph [46] and the reference made to the decision in Rhuppiah and the reference to the normative guidance that may be overridden in an exceptional case by particularly strong features.) The judge then returned to his assessment, taking into account his length of residence, his claimed personal relationships, that there were no very significant obstacles to his reintegration, that he could secure employment and that he could support himself with the assistance of friends if necessary and could continue his

private life in terms of religious activity upon return. Having considered those factors and at [49] stating "having considered the public interest considerations relevant factors "in the round" "I conclude that the interference in the private life of the appellant is justified, having regard to the public interest." On the evidence before the FtTJ that was a conclusion that was reasonably open to him to make.

67. I now turn to a document that was attached to the skeleton argument of the appellant sent on 3 July 2020. The skeleton argument itself repeated the matters in the grounds of appeal relating to the S117B considerations and that the FtTJ did not properly consider whether there were "very significant obstacles to his integration". That skeleton argument does not make any reference to fresh evidence. It attaches to it an NHS medical card in the name of the appellant with a typed issue date of 3/7/00 on the back of the document is an unrelated photocopy with a signature and date 7 – 11 – 11.

68. In the rule 24 response on behalf of the respondent dated 7 July 2020 refers to the appellant's ground stating that the material had only just come to light. It is not clear where that reference came from. However the respondent stated that she objected to the submission of the evidence as it was unclear why it was not before the judge or part of the original application to the respondent. In any event it was submitted that it did not mean that the appellant was continuously the United Kingdom since the year 2000.

69. Following this a response on behalf of the appellant was issued stating that the NHS card was not new to the respondent and that the document was included in the respondent's bundle. The reply then goes on to cite authorities as to the respondent's duty of disclosure. The submission concludes that the Home Office have failed to disclose a material fact.

70. At the hearing before the Upper Tribunal, no further reference was made either in writing or in any oral submissions as to this evidence. The only reference was made to it was when after the rule 24 response was read out (because Mr Diwnycz did not have a copy of it at hand) and it was after this that Mr Adeniran referred to the document. He was asked why it was not before the judge and he stated it was as a result of a subject access request. He made reference to the previous solicitors having made an application. When asked why this was not put forward as a ground of appeal, he stated that the solicitors and become aware of this when the appellant informed his solicitors a few days before the FtTJ's hearing. When asked why an application was not made to adjourn the hearing, it was stated that the appellant had contacted his previous solicitors who confirmed that he had sent the original documents the Home Office and requested for a file of papers to be returned. It was confirmed that the appellant wanted to go ahead with the hearing and not to wait.

71. Mr Diwnycz made the point that the appellant was represented by counsel and if this were the position he would have known but that there was no request for any adjournment.

72. The grounds upon which permission was sought and granted are clearly set out in the grounds which were sent to the Tribunal on 13 January 2020. The hearing of this appeal took place on 12 November 2019. There is nothing in those grounds that makes any reference to further material that was or could have been relevant to the decision made by the FtTJ or was outstanding at the time of the hearing. In fact, the grounds do not expressly challenge the FtTJ's findings that he could only establish residence in the UK between 2003 – 2009 and based on him being present at the hearing in 2019 (the omnibus conclusion set out at [32]. The appellant has been represented by the same solicitors through these proceedings/as indicated by the notice of appeal, the requirement to pay a fee correspondence, issues relating to an out of time appeal and before the FTT J.

73. The first reference to it is in the correspondence sent on 20th July 2020, which I have set out above. No further information has been provided either a written statement on behalf of the appellant setting out any events, the circumstances in which the document was provided or any further material in support of that claim.

74. The notice of hearing that was sent includes in bold the following; "the Upper Tribunal not consider evidence which was not before the first-tier Tribunal unless the Upper Tribunal has specifically decided to admit that evidence. That is a reference to Rule 15 (2A).

75. Rule 15(2A)
The Tribunal is empowered to permit new or further evidence to be admitted in the re-making of a decision. In any case where this facility is sought the parties must comply with Rule 15(2A) which is in these terms:

In an asylum case or an immigration case -

(a) if a party wishes the Upper Tribunal to consider evidence that was not before the First-tier Tribunal, that party must send or deliver a notice to the Upper Tribunal and any other party -

(i) indicating the nature of the evidence; and

(ii) explaining why it was not submitted to the First-tier Tribunal; and

(b) when considering whether to admit evidence that was not before the First-tier Tribunal, the Upper Tribunal must have regard to whether there has been unreasonable delay in producing that evidence.

76. A failure to comply with Rule 15(2A) will be regarded as a serious matter and may result in fresh or further evidence not being considered by the Tribunal (see appendix to decision of Lama (video recorded evidence -weight - Art 8 ECHR) [2017] UKUT 16 (IAC)).

77. There has been no compliance with Rule 15(2A). As set out above, there was no application in writing at any time prior to the hearing nor was there any application either in writing or in oral terms before the Upper Tribunal. Furthermore, there had been no application to amend the grounds of challenge to include a challenge to the decision made by the FtTJ on the basis of his findings of fact on long residence of 20 years. There was no explanation in writing as to how that document had come into the appellant's possession, or any circumstances surrounding it beyond that in the written information provided in July. It does not satisfy the test in Ladd v Marshall.

78. For those reasons, there is no material before the Tribunal to demonstrate the judge was an error in his findings. Even if that document had been provided by way of disclosure, as the respondent sets out in the rule 24 response there is no supplementary evidence provided in support that the document or any other evidence that demonstrates that the appellant was continuously in United Kingdom since July 2000; the judge having found that he was only satisfied that he was in the United Kingdom between 2003 – 2009 and on a date in 2019 at the hearing (see [32]). The requirements of paragraph 276AD(1) require a person to have been resident for that period of time continuously in the United Kingdom. Nor does it support his claim that he had been in the UK since 1994, which was the basis of his claim. Also the document gives an address of xxx C C London as at July 2000 whereas the appellant's witness statement sets out that he lived at that address between 2006 and 2012 and therefore the document is inconsistent with that statement. The document therefore does not undermine the judge's overall findings made.

79. For those reasons I am satisfied that it has not been demonstrated that the decision of the FtTJ discloses the making of a material error of law and the decision should therefore stand.

80. If the appellant has further evidence he wishes to rely upon, it would be open to him to make a further application to the Secretary of State who will consider the evidence and any further submissions provided.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law and therefore the decision shall stand.

Signed *Upper Tribunal Judge Reeds*

Dated 2 December2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days, if the notice of decision is sent electronically).

3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days if the notice of decision is sent electronically).

4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days if the notice of decision is sent electronically).

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday, or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email