IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004164

First-tier Tribunal No: HU/55494/2022
IA/07995/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 8 November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SKINNER

Between

OLU SIMON BELLO
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S. Tampuri, Legal Representative, of Tamsons Legal Services Ltd
For the Respondent: Mr N. Wayne, Senior Home Office Presenting Officer

Heard at Field House on 1 November 2023

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria and claims to have entered the UK in and remained here since 1994. That claim was rejected by the First-tier Tribunal ("the FTT") in 2017, which held that he arrived in the UK in 2005.

2. In November 2021, the Appellant applied to the Respondent for leave in very large part on the same basis, but with further evidence to try to evidence his earlier arrival to get over the critical 20-year continuous residence threshold. That application was rejected by decision dated 17 August 2022. The Appellant appealed against that decision to the FTT. However, by a decision dated 11 June 2023, the First-tier Tribunal, applying well known Devaseelan principles, dismissed his second appeal ("the FTT Decision"). The Appellant now appeals with permission to this Tribunal against the FTT decision.

3. I was not asked to make an anonymity order and in light of the issues in the case, I do not consider that there is anything that outweighs the importance of the open justice principle. No anonymity order is therefore made.

4. Having summarised the details of the appeal, the Respondent's 17 August 2022 decision, the appeal notice, applicable Immigration Rules and burden and standard of proof and having set out in some detail what occurred at the hearing, the FTT came to its "Findings and Decision" at para.13 and following. That section merits setting out in full, as follows:

> "As accepted in the submissions, this is the second time that the appellant has appeared before this Tribunal in relation to his claim that he had been in the UK since September 1994. He appeared before this Tribunal on 6th April 2017 together with his partner, as co-appellants, when he claimed that he had been in the UK since 1994 and she claimed that she had been in the UK since 1990. The were both found not to be credible witnesses and the appeal was dismissed. The appellant made no attempt to leave the UK after all of his appeal rights were exhausted in August 2018, but has continued to make applications, including the current application, which is substantially on the same grounds as the previous application, which was dismissed on appeal in 2017. This is an appeal to which the leading case of Devaseelan 2003 Imm AR 1 applies. Devaseelan provides that the first determination should be taken as the starting point for a subsequent determination and is to be treated as an authoritative assessment at the time that it was made. Events since the earlier determination can be taken into account if they lead to a different conclusion. Facts which could have been brought to light in the first appeal but were not, will be treated very cautiously at the second appeal unless those facts are beyond dispute. Where the facts put forward in the second appeal are essentially the same as those relied on for the second appeal, the Tribunal should make findings in line with the first determination.
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> 14. The appellant claims to have a private life in the UK and that he meets the 20 year requirement under paragraph 276ADE, having been in the UK since 1994, he also claims to have a family life with his partner, Sadiat Popoola, although he accepts that he cannot qualify under this heading, as his partner does not have leave to remain in the UK. Additionally, Ms Popoola was a party to the appellant's last appeal, she was not found to be credible and the appeal was also dismissed. Although Ms Popoola states she is preparing to make a further application, the current position is that the appeal has been dismissed and her appeal rights are exhausted. Even though the appellant states that he is caring for his partner, and that she has health issues, as she has no leave to remain in the UK and has had her appeal dismissed, there can be no basis on which the appellant can be granted leave on the basis of family life with his partner.
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> 15. The appellant claims to have been in the UK since 1994 and therefore meets the requirements of paragraph 276ADE, having been in the UK for over 20 years. This claim was fully aired at this Tribunal on 6th April 2017, where the appellant's evidence was not found to be credible and it was not accepted that the appellant was present in the UK before 2005. Applying the Devaseelan [sic], the finding of the previous Tribunal is my starting point for this decision. The appellant still relies on the same facts, most of which were fully considered at the last hearing. The appellant is still unable to provide evidence of his entry date to the UK, it was submitted that the respondent

should search records of the date of entry, but the appellant states that he entered illegally and claims that his uncle had retained his passport. The appellant states that the last appeal was dismissed on the ground of an unreliable tenancy agreement, but the document was found to be false on the last occasion and the appellant has simply repeated the same evidence at this hearing that he provided at the last hearing. I find no basis to overturn the finding of the last Tribunal that the appellant provided a tenancy agreement which was unreliable and contained discrepancies for which the appellant gave an inadequate explanation.

16. The only other evidence which the appellant provided at the previous Tribunal, of being in the UK before 2005, was a certificate dated 1998. The certificate was not accepted in view of the overall lack of credibility of the claim. The appellant has now submitted further educational certificates, dated 1995, two in 2000, August 2005 and August 2006. The previous Tribunal accepted that the appellant had been in the UK from 2005. The appellant has no explained why the 1995 and two certificates for 2000 were no [sic] provided for the previous Tribunal. Applying Devaseelan, these certificates should be considered with caution and in the absence of an explanation for not producing them for the previous appeal, I find that they lack credibility. The credibility of the 1995 certificate is further diminished by it being dated just five months after his arrival in the UK, when the appellant states that he only came to the UK for two months, but five months later he was able to complete a course as a forklift truck driver. The appellant told this Tribunal that he did not make an application for leave until 2009 because he had taken legal advice and was told not to apply before he had been in the UK for 14, years, this was not consistent with his evidence to the previous Tribunal that he did not claim earlier because he was not aware that he could apply.

17. Mr Akindele gave evidence at the last hearing in [sic] his evidence was taken into account when the appeal was dismissed. I find no basis to reverse the findings of the previous tribunal in respect of his evidence. Given the overall lack of credibility and the length of time since the events with no contemporaneous evidence, I am not satisfied that the evidence of Mr Adeforowa is sufficiently reliable to overturn the previous findings. I find insufficient evidence on which to change the findings of the previous Tribunal and I am not satisfied that the appellant has been in the UK before 2005. I find that the appellant is unable to satisfy the requirements of paragraph 276ADE with regard to private life, he is unable to demonstrate that he has been in the UK for at least 20 years prior to the date of the application.

18. Considering private life outside of the Rules, the appellant has not claimed to have established a significant private life in the UK in terms of work, studies or communal involvement. He states that he has friends, but this can be replicated on return. Applying S117B(5), little weight is to be given to private life which has been established while that appellant's immigration status is precarious. The appellant has never had substantive leave in the UK, despite being here since 2005, I find that little weight attaches to any private life which he may have established.

19. Applying paragraph 276 ADE(1)(vi), as I have found that the appellant has lived in the UK for less than 20 years, he may qualify for leave if he had demonstrated that there were very significant obstacles to his integration on return. The appellant has offered no such evidence, other than to say that

> he is now aged fifty-four and has been away for a long time. As with the previous Tribunal, I have found that he has not been in the UK since before 2005, and therefore has not been away for more than 18 years. He has spent the majority of his life in Nigeria, he speaks the language and understands the culture and social norms. The previous Tribunal found that the appellant still had connections in Nigeria and I find no basis to depart from that conclusion. I am not satisfied that the appellant would face very significant obstacles on return to Nigeria. The appellant states that he cares for his partner, but she does not have leave to remain in the UK and failed in her attempt to appeal a decision of the Home Office to refuse her leave. The appellant's partner is from Nigeria and could return with him if she so wished.
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> 20. The appellant claims that he is on [sic] poor health but has not particularised his health issues, neither has he demonstrated that he could not seek treatment in Nigeria. His partner's case is not before this Tribunal and the current position is that she has remained without leave and has no standing to make a claim as part of this appeal. In any event, she has not demonstrated that she would be unable to access treatment in Nigeria."

5. The Appellant's grounds of appeal (which sloppily referred to the wrong case) were in substance two-fold: first, that the FTT had failed to ask him at the hearing why he had not produced the certificates from 1995 and 2000 at his first FTT appeal hearing, which was unfair, and second, that the FTT had failed properly to explain why it rejected the evidence of Mr Adeforowa (and possibly other supporting witnesses) and/or had erred in doing so.

6. On 27 September 2023, permission to appeal was granted by the FTT on the second of these grounds only and there has been no renewal application in respect of the first.

7. The Respondent did not file a rule 24 response.

8. It is worth noting that the Appellant's appeal to this Tribunal is of very narrow compass. There is no suggestion that the Judge misapplied the Devaseelan principles, nor is there any challenge to the decision not to overturn the finding of the previous FTT that the tenancy agreement referred to in para.16 of the FTT Decision was unreliable and contained discrepancies for which there was an inadequate explanation. There is likewise no challenge to the rejection of Mr Akindele's evidence. The Appellant has been refused permission to challenge the findings in respect of the educational certificates.

9. At the hearing, Mr Tampuri suggested that the ground on which the Appellant had been granted permission extended to a challenge to the FTT's rejection of both Mr Adeforowa's evidence and its omission to mention at all the evidence of a Ms Raliatu Oguns. Ms Oguns' evidence is not mentioned in the Grounds of Appeal and it does not appear from the FTT Decision that she did more than file a short witness statement. However the Judge granting permission considered that the ground related to the rejection of the evidence of "the supporting witnesses" which is plainly capable of including Mr Oguns. Despite her evidence not being expressly identified in the grounds as wrongly rejected I therefore do not exclude consideration of the failure to mention or explain why the FTT rejected her evidence.

10. Given that the Grounds do address Mr Adeforowa's evidence more directly and he was said by Mr Tampuri to be the strongest witness that the Appellant had that had not previously given evidence, I start with the FTT's rejection of Mr Adeforowa's evidence. The Judge rejected his evidence in para. 17 on the basis of "the overall lack of credibility and the length of time since the events with no contemporaneous evidence". Mr Tampuri's submission was in essence that this was insufficient, that the FTT was required to give greater consideration to this evidence before it could be dismissed. I am afraid that I am unable to accept this submission. The reasons given were, in my judgment, intelligible and sufficient to explain why the FTT had rejected this evidence and (to the extent that the submission is made to the contrary) the decision to do so was one which the FTT was entitled to make. Taking those in turn:

    a. As to the FTT's reasons, it is clear that the basis for not giving weight to the evidence of Mr Adeforowa was two-fold. First, it had to be seen in the context of the credibility of the evidence as a whole. As the FTT noted, the Appellant and his partner's credibility had been found wanting, they had been found to have produced non-genuine documents and caused others to give evidence on their behalf which was not accepted. That is, in my view obviously, what the FTT was referring to when describing the "overall lack of credibility". The second reason was the lack of contemporaneous documents, particularly given the length of time that was said to have elapsed since the relevant period. That again is a perfectly intelligible reason.

    b. As to the substance of the reasons, in a Devaseelan case in particular, the previous credibility findings form the starting point of the analysis, so this, and the fact that the FTT had not considered new documents to be credible was something the FTT was entitled to consider in deciding what weight to give Mr Adefowora's evidence. This is particularly so in light of the Judge's second reason – the lack of any contemporaneous documents adduced by Mr Adeforowa. I put the issue of documents to Mr Tampuri and he accepted that there was no document placed before the FTT that would indicate that the Appellant knew Mr Adeforowa during the relevant period. In the circumstances where Mr Adeforowa's witness statement was less than 2 pages long and his evidence expressed at a very high level of generality, the FTT's conclusion that no weight could be given to his evidence was not one that could in my judgment be said to be even approaching perverse.

11. As to Ms Oguns' evidence, this is not mentioned by the FTT. It is however well established that this does not mean that the FTT left it out of account. There is nothing in the language of the decision that indicates that it was omitted from consideration. However, a Judge is required to explain why, as would appear to be the case here, they decided to give a witness' account or document no weight: see MK (duty to give reasons) Pakistan [2013] UKUT 641 (IAC). The FTT's failure to give any reasons whatsoever for rejecting Mr Oguns' evidence does, in my view, constitute an error of law.

12. The next question that then arises is whether that error is material. In my judgment it is not. The first point to note is that Ms Oguns does not appear to have attended to give evidence. The FTT went through the evidence of those witnesses who attended to give oral evidence methodically in the "Hearing" section of the decision and her absence from that section is in my view a clear

indication, absent any evidence to the contrary, that she did not do so. Mr Tampuri faintly suggested that she might have done but been told by the Judge that she did not need to adopt her statement, but that is not borne out by the FTT Decision and there is no other evidence before me of what took place before the FTT. The second relevant aspect of Ms Oguns' evidence is, as with Mr Adefowora, she did not adduce a single document evidencing her having known the Appellant at the relevant time. Third, her witness statement is on any view inadequate to demonstrate that the Appellant had been living in the UK for as long as he claimed. It is also remarkably short and lacking in detail. Apart from introductory and conclusory matters, it simply states "I am a friend of the appellant's partner; Sadiat Olanike Popoola. I have known both of them since 2004 and I can confirm that I used to see then regularly until they were evicted in their accommodation in 2018. I took them in as a kind gesture and to their financial circumstances. His partner has also got a health condition. We have since been living together ever ever [sic] since. Although, they were not known to me prior to 2004, I have no reason to doubt they have lived in the UK for over twenty years." Key to this is that Ms Oguns has not known the Appellant, even today, for the requisite 20-year period. If the FTT had not erred in failing to give reasons, it would in my judgment have been bound to decide that no weight could be placed on her evidence and in any event it would not have demonstrated, even if accepted, that he had been continuously resident for the necessary 20-year period. It follows that had the FTT given reasons for rejecting Ms Oguns' evidence, it would have made no difference to the outcome and its failure to do so is accordingly immaterial.

13. It follows that this appeal must be dismissed.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of a material error of law and shall stand.

Paul Skinner

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

2 November 2023