IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004905

First-tier Tribunal No:
HU/51165/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 16th of May 2024

Before

UPPER TRIBUNAL JUDGE SMITH

Between

MOHAMED DALI

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S Ferguson, Counsel instructed by Black Antelope Law
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

Heard at Field House on Thursday 25 April 2024

DECISION AND REASONS

BACKGROUND

1. By a decision promulgated 23 February 2024, I found an error of law in the decision of First-tier Tribunal Judge Moffatt itself promulgated on 25 August 2023 allowing the Appellant's appeal against the Respondent's decision dated 11 February 2022 refusing the Appellant's human rights claim. My error of law decision is annexed hereto for ease of reference.

2. In consequence of the error found, I set aside the offending part of Judge Moffatt's decision. This however was only one sentence, finding that the Appellant met paragraph 276ADE(1)(iii) of the Immigration Rules ("Paragraph 276ADE(1)(iii)" of "the Rules") based on his length of residence in the UK. Paragraph 276ADE(1)(iii) includes a suitability requirement and the Appellant had admitted to use of false documents in his application seeking leave to remain on the basis of his long residence. That was not considered by the Judge. Moreover, the Judge had failed to set the finding in context of the only issue which she had to decide namely whether removal of the Appellant would breach his Article 8 ECHR rights.

3. I gave directions which included a requirement on the Respondent to provide a supplementary decision setting out his position on the suitability requirement under Paragraph 276ADE(1)(iii). That supplementary decision is dated 19 February 2024 ("the Supplementary Decision"). It confirms that the Respondent considers that the Appellant cannot meet paragraph S-LTR.2.2(a) of Appendix FM to the Rules. Accordingly, he cannot meet Paragraph 276ADE(1)(iii).

4. In addition to the Supplementary Decision, I had before me a bundle of documents running to 415 pages which I refer to hereafter as [B/xx]. That included the core documents for the appeal before this Tribunal, as well as the Appellant's and Respondent's bundles before the First-tier Tribunal. I also had a supplementary bundle of 26 pages to which I refer hereafter as [SB/xx]. I have considered those documents in full but refer only to those which are relevant to the narrow issues which I have to determine.

5. Mr Dali gave oral evidence in English and was cross-examined. Again, I have considered all his evidence but refer only to that which is relevant to the issue I have to determine.

6. Having heard submissions from Ms Ferguson and Mr Avery, I indicated that I would reserve my decision and provide that in writing which I now turn to do.

THE ISSUES AND LEGAL FRAMEWORK

7. I have preserved Judge Moffatt's findings other than that which found that the Appellant met Paragraph 276ADE(1)(iii). As such, it is accepted that the Appellant meets the other parts of that rule which is now to be found in Appendix Private Life to the Rules ("Appendix PL"). The parts of Appendix PL relevant to this appeal are as follows:

> "**Suitability requirements on the Private Life route**
> PL 2.1. The application must not fall for refusal under the suitability grounds for refusal for leave to remain as set out in S-LTR.1.2. to S-LTR.2.2. and S-LTR.3.1. to S-LTR.4.5. of Appendix FM of these rules.
> …

> **Residence requirements for an adult on the Private Life route…**
> PL 5.1. Where the applicant is aged 18 or over on the date of application:
> (a) the applicant must have been continuously resident in the UK for more than 20 years; or…
>
> **Continuous Residence requirements on the Private Life route**
> PL 7.1. The period of continuous residence at PL 3.1, PL 4.1. or PL 5.1. may include time spent in the UK with or without permission….
> **Eligibility Requirement for Private Life route relying on Article 8 of the Human Rights Convention**
> PL 8.1. If the applicant does not meet the suitability requirements (subject to PL 8.2), or does not meet any of the eligibility requirements in PL 3.1., PL 4.1. or PL 5.1. the decision maker must be satisfied that refusal of permission to stay would not breach Article 8 of the Human Rights Convention on the basis of private life.
> PL 8.2. Where PL 8.1. applies and the applicant falls for refusal under suitability paragraphs S-LTR.1.2., S-LTR.1.3., S-LTR.1.4., S-LTR.1.5., S-LTR.1.6 or S-LTR 1.8. of Appendix FM of these rules the application on the Private Life route will be refused.
> **Decision on an application under the Private Life route**
> PL 9.1. If the decision maker is satisfied that all the suitability requirements are met and the eligibility requirements at PL 3.1, PL 4.1, PL 5.1 or PL.8.1. are met then, unless paragraph PL 8.2. applies, the applicant will be granted permission to stay on the Private Life route, otherwise the application will be refused."

8. Ms Ferguson drew my attention to paragraphs PL8.1 and 8.2. I do not consider that those take matters any further. They draw the distinction between the mandatory and discretionary nature of certain of the suitability rules. Where the suitability requirement is discretionary, leave cannot be refused if a refusal of leave would breach Article 8 ECHR even though the suitability requirements of the Rules are not met.

9. The issue for me to determine is whether the decision breaches Article 8 ECHR as the only issue in this appeal. Paragraph 8.1 therefore does not advance matters so far as concerns the application of the suitability requirements. I accept that the Appellant has not been refused under one of the mandatory suitability provisions in paragraph PL8.2.

10. As I also pointed out, and Mr Avery agreed, the Appellant is in no different position whether he meets Appendix PL or succeeds outside the Rules. On either basis, he would be on a ten-year route to settlement. I do not therefore need to determine any issue in relation to the Respondent's application of the suitability requirements to the Appellant's case. As I pointed out to Ms Ferguson, I am not undertaking a review of the Respondent's decision. I repeat that the only issue for me to determine is whether the Respondent's decision breaches the Appellant's Article 8 rights which in this case are confined to his private life.

11. Outside the Rules, I have to balance the interference with the Appellant's private life, including the fact of him having lived in the UK continuously for more than 20 years, against the public interest. In so doing, I apply the factors in section 117B Nationality, Immigration and Asylum Act 2002 ("Section 117B"). The parties were agreed that the relevant factors are as follows:

> "**Article 8: public interest considerations applicable in all cases**
> (1) The maintenance of effective immigration controls is in the public interest.
> (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
> (a) are less of a burden on taxpayers, and
> (b) are better able to integrate into society.
> (3) It is in the public interest, and in particular in the 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) are not a burden on taxpayers, and
> (b) are better able to integrate into society.
> (4) Little weight should be given to—
> (a) a private life, or
> (b) a relationship formed with a qualifying partner,
> that is established by a person at a time when the person is in the United Kingdom unlawfully."

12. The Appellant gave his evidence in English and no issue was taken in relation to his financial independence. Sections 117B (2) and (3) are however neutral. In essence, therefore, I have to balance the Appellant's private life against the public interest in the maintenance of effective immigration control which includes the fact of the Appellant's unlawful residence and use of false documents which may impact on his ability to meet the Rules. Although the Appellant's private life is to be given little weight applying section 117B (4), Ms Ferguson submitted that this does not mean no weight. She accepted however, that I am concerned with the substance of the Appellant's private life and not simply the length of his residence in the UK.

EVIDENCE AND FINDINGS

13. Mr Dali has provided three witness statements dated 3 April 2022 ([B/1-5]), 28 July 2023 ([SB/4-9]) and 19 April 2024 ([SB/1-3]). At the hearing, he was only asked to adopt the latter two statements and I was not taken to the first. In light of an issue which arose in relation to Mr Dali's oral evidence, however, I need to refer to that earlier statement briefly.

14. At [14-15] of the first statement, the Appellant says this:

> "14. Contrary to the Respondent's refusal decision, I have attempted to furnish the Respondent with as many accurate and genuine documents (such as P45s and P60s) to demonstrate my length of stay in the UK and these documents have been furnished again for the purposes of this appeal. I provided all the original documents for the Respondent to verify as the closure of these businesses were beyond my control and therefore the Respondent is aware of the same.
> 15. Due to my irregular status, it is very difficult to obtain more documents as specified by the Respondent and I have therefore provided what I have in my possession."

15. In his decision letter, the Respondent had said this about the documentation to which the Appellant here refers ([B/280]):

> "You have submitted evidence from four different UK employers; Morris Dry Cleaners, Zee Beds, Shahid Halal Butchers and Chicken Griller Ltd which spans the period 2003 to 2010, as well as more recent evidence from a fifth employer, Uptown Lettings Ltd for the period 2017 to 2019. In all instances it is noted that the evidence provided consists of a combination of pay slips, P45 documents and P60 documents, with these documents all generated and issued by the respective employer, with no other independent evidence to verify this information.
>
> For each period of claimed employment it is noted that the documents you have provided state that you were paid in cash as well as indicating that you were under the earnings threshold for paying tax and national insurance.
>
> Furthermore, it is noted that none of the stated businesses are still trading and when a request was made for you to provide confirmation of your employment history for your time in the UK direct from HMRC it was claimed that you had been unable to obtain this information. The employment documentation alone is subsequently insufficient to confirm your continued UK residency during these periods."

16. By the time of his second statement, on 28 July 2023, very shortly before the hearing before Judge Moffatt, the Appellant said this about the documents ([SB6-7]):

> "15. Contrary to the Respondent's refusal decision, I have attempted to furnish the Respondent with as many documents (such as P45s and P60s) to demonstrate my length of stay in the UK and these documents have been furnished again for the purposes of this appeal. I provided all the original documents for the Respondent to verify as the closure of these businesses were beyond my control and therefore the Respondent is aware of the same.
> 16. Although I acknowledge having worked unlawfully in the past, I made honest efforts to acquire payslips and relevant documents through an accountant, Mr Ghazi (that is all I remember of his name). Unfortunately, I later discovered that the documents may not have been genuine, and I firmly believe that I was misled by this accountant.
> 17. To explain further, as part of getting my application for Further Leave to Remain ready to be submitted by my previous representatives on 23 March 2011, I went to my previous employers and collectively they sent me to an accountant (Mr Ghazi) whom I paid £1,000 and the accountant then provided me with the payslips and P45

> that appear in my bundle. The oldest of these documents can at least demonstrate my residence from 2003 at Morris Dry Cleaner and the reminder [sic] includes all documents residence prior to 2012.
> 18. I can therefore demonstrate as to how I obtained these documents openly and can further readily volunteer that I had paid for them whilst not knowing if they were genuine documents or not. I believe I was the victim of a dishonest accountant who took a large amount of money off me for them. I have not been dishonest and can offer a genuine explanation for these documents.
> 19. Due to my irregular status, it is very difficult to obtain more documents as specified by the Respondent and I have therefore provided what I have in my possession."

17. As will be apparent from the foregoing, the Appellant's initial stance was that the documents he had provided were all genuine and accurate. It was only shortly before the First-tier Tribunal hearing that he admitted that they may not be and set out the circumstances in which he had obtained them.

18. At the hearing before Judge Moffatt, the Appellant admitted that "[h]e obtained the documents not knowing whether they were genuine documents or not". He said that "he was a victim of a dishonest accountant". He "accepted that the payslips were not genuine" ([B8]).

19. Judge Moffatt made the following findings in this regard (B/10 and 12):

> "28. This has been a difficult decision because much of the documentary evidence provided by the appellant has proved to be unreliable and no, or very little weight can be attached to it. The appellant no longer seeks to rely upon the pay slips and bank statements provided with his application.
> 29. Had he done so, I would have attached no weight to the evidence because the National Insurance number quoted for the appellant on the documents does not comply with the format one would normally expect to see. In many of the documents, it is cited as 010180M, missing the alphabetic prefix. The numbers are also the appellant's date of birth, which is again not in a format one would normally expect. The appellant has not been able to verify any work undertaken since 2001 from HMRC records despite attempting to do so (As bundle p31).
> …
> 41. Having considered all the evidence in the round, I find that the majority of documentary evidence served by the appellant is not reliable, although the respondent has not taken any issue with the tenancy agreements, and attach little weight to it for the reasons above. I find that the appellant's credibility is damaged because of the unreliability of the documentary evidence and the inconsistencies in the history of the addresses which he has set out in his witness statement.
> 42. Whilst the appellant's credibility is damaged, I did not find him to lack all credibility. He has been honest with the Tribunal about the deficiencies of the employment evidence and there is ample evidence

> to support his contention that he did carry out voluntary work and frequented the coffee shop in Palmerstone Road. He has accepted that he has worked illegally since being in the UK."

20. Ms Ferguson sought to turn the Appellant's use of false documents into a positive by suggesting that he had admitted that the documents were not genuine without any prompting. However, that is simply inconsistent with the oral evidence which the Appellant gave.

21. He said in both examination in chief and when cross-examined that he had admitted that they were false because the Home Office had said they were not genuine. He had been advised by his solicitor to admit that they were not. He said this had occurred "at the first hearing". When asked whether that was in response to his statement admitting that the documents were false, he repeated that his solicitor had said that he had to admit it because the Home Office was saying they were fake. When the chronology was again put to him by Ms Ferguson (that the Home Office had not challenged the documents in the decision under appeal or the e-mail exchange asking for more documents), the Appellant repeated that the Home Office had mentioned it at the hearing, and this was the first time he had heard this.

22. In cross-examination, when Mr Avery put to the Appellant that he had said that it was not until the First-tier Tribunal hearing that concerns were raised, the Appellant again repeated that the "Home Office agent had mentioned" and that "the Home Office said they were not genuine so I had to admit".

23. Ms Ferguson did not re-examine the Appellant in this regard but then submitted that it was the Appellant who had first raised the issue of the documents being false. That was however not the evidence I had. This led to an exchange where Ms Ferguson suggested that it may be the way in which the questions were put which had led to the Appellant's answers. She pointed out that the Appellant had made his statement prior to the first hearing before the Judge and therefore before any concern could have been raised by the Home Office. She asked to re-examine the Appellant on this issue, but I refused her request on the basis that any changed evidence from the Appellant, having heard our discussion, could not bear any weight.

24. Having reviewed the First-tier Tribunal's records in relation to the appeal, and although neither party referred me to this, the answer to what appeared to Ms Ferguson to be a chronological difficulty with the Appellant's oral evidence is readily apparent. There had in fact been an earlier hearing before First-tier Tribunal Judge Seelhoff (which may explain Ms Ferguson's references to Judge Seelhoff rather than Judge Moffatt and the Appellant's reference to the first

hearing being before him). The hearing before Judge Seelhoff took place in December 2022 and led to a decision promulgated on 3 January 2023 (subsequently set aside when the appeal was remitted for re-hearing). It is clear from that decision (which remains on the Tribunal's file in spite of it being set aside) that the documents were accepted by the Appellant to be false at that hearing. That is of course prior to the statement dated 28 July 2023 when they were accepted to be false.

25. In consequence of that chronology (to which my attention should have been drawn but was not), I do not accept that the Appellant volunteered that the documents were false until they were challenged by the Respondent at the time of that first hearing before Judge Seelhoff. That is consistent with the Appellant's oral evidence.

26. In his third witness statement, the Appellant said this ([SB/2]):

> "3. …In any event and at all circumstances, I acknowledge that I admitted to using false documents during my application process for leave to remain.
> 4. I would like to clarify that this admission was made voluntarily and transparently, with full awareness of the implications. My intention was not to deceive the authorities but rather to ensure the continuity of my life in the UK, where I have spent a significant portion of my life.
> 5. I deeply regret this error in judgment and fully accept the consequences of my actions. However, this should not overshadow my overall integrity and the sincerity of my claims.
> 6. Despite my admission of using false documents, my overall credibility should not be judged solely on this isolated incident. My consistent testimony regarding my arrival and long-term residency in the UK, along with credible witness testimonies that support my claims, demonstrate my reliability and integrity."

27. Whilst I accept that the Appellant did voluntarily admit that the documents were not genuine, as set out above, I do not consider that he would have done so if the issue of their genuineness had not been raised, apparently at the hearing before Judge Seelhoff. His first witness statement would otherwise have not been in the terms it was.

28. As Mr Avery pointed out, it does not matter for the purposes of S-LTR.2.2 whether the Appellant knew that the documents were false or not. The Appellant's case is that he did not know and that he was the victim of a dishonest accountant.

29. The Appellant was challenged about this by Mr Avery. He accepted that he had no documentation at the time he was working as he had no status, no bank account and had been paid cash in hand. He said however that he thought that the documents must exist because he had genuinely been working for those employers.

30. The Appellant's account about how he got the documents was confused. In his witness statement, he said that he had gone to his employers, and they collectively sent him to the accountant. He told Mr Avery that it was the manager from Zee Beds who had sent him to the accountant. He agreed that the documents which the accountant had produced were not just from that employer. When asked how that accountant would be able to provide documents from multiple employers, the Appellant said only that someone had referred him, Zee Beds had closed down, but the person had given him the name of the accountant and he had paid money. He then said that he had asked the accountant for a reference, and he had agreed. The Appellant said he had asked Mr Ghazi if the documents were genuine, and he said they were.

31. When I sought clarification about how the Appellant had made contact with the accountant (given the apparent discrepancy between his statement and oral evidence), the Appellant repeated that he had been sent to the accountant by a Mr Shaheen from Zee Beds for a reference and he had to have permission from the other employers to do a reference for them also.

32. I do not accept as credible the Appellant's evidence in this regard. There is an inconsistency between his written statement that his former employers collectively sent him to the accountant and his oral evidence that it was a person from one of the employers who had ceased trading. Moreover, if he had requested and was expecting a reference from the accountant, he has failed to explain why he did not question the provision of official documents. He said he had no reason to question those documents because he knew that he had worked for those employers. However, even if that is so, he has failed to explain how one accountant who may or may not have worked for the one employer who he now says referred him to that accountant would be able to provide official documents from other employers. He could not have believed that the documents were the reference he expected. He must have known that as official documents which he had not received at the time he was working for those employers, they could not be genuine whatever the accountant said. The amount he was asked to pay for the documents should also have rung alarm bells. I do not believe that the Appellant was unaware that the documents were false. That is damaging to his credibility. It also justifies the Respondent's conclusions on suitability.

33. I turn then to the evidence about the Appellant's private life which was not challenged. In this context, I have preserved Judge Moffatt's finding that the Appellant has been in the UK since 2001 ([46] at [B/13]).

34. I have taken into account the letters written in support of the Appellant by his friends at [B/231-261]. Those are largely concerned

with the period during which his friends have known him (understandably since that was the main issue which the Appellant had to establish). Many are in common form and appear to recommend the Appellant for employment rather than dealing with the substance of their relationship.

35. There are letters which attest to the Appellant's charitable work and community participation. They speak of him as popular, trustworthy and reliable.

36. One factor which might have been deserving of more weight in this case is that the Appellant is one of a pair of twins. His twin brother came to the UK at the same time as him and remains in the UK. The difficulty in attributing weight to this aspect of the Appellant's private life, however, is the lack of evidence about this from the Appellant. The only mention of his twin by the Appellant is at [3] and [4] of his second statement as follows ([SB/5]):

> "3. On or around 06 June 2001, I entered the UK with my twin brother (Lotfi Dali of the same birthday as me) having sneaked onto the back of a lorry from France (contrary to the Respondent, I did not use the help of an agent). I was 20 years old when I first arrived in the UK. I have spent over 22 years in the United Kingdom to date continuously since my clandestine entry.
> 4. It is crucial to note that Lotfi Dali has submitted a separate application for Further Leave to Remain and should be treated as distinct from my application."

37. It appears from the foregoing that the Appellant does not wish his brother's presence in the UK to be taken into account; his evidence is that he wishes to distance himself from his brother's application. In any event, Ms Ferguson was unable to give me any information about his brother's status and it appears that he probably has no leave to remain in the UK either.

38. I have a letter from a Mr Mustapha Mansouri dated 26 February 2024 at [SB/10-11] who speaks of knowing both brothers. He speaks of their "work ethic, virtues, transparency, probity and integrity" which he says is the same as that of their father who he knew in Algeria. He says that both the Appellant and his twin are "individuals of compassion, pro-social tendencies and discernment" and that in their time in the UK "they have consistently exhibited traits of integrity, reliability and equanimity".

39. Mrs Houria Mansouri (who I assume to be Mr Mansouri's wife) also speaks of their "high standards in all aspects of their conduct" and the help and assistance that they have provided to her and others in need. She says that "[t]hey are known for their willingness to lend a helping hand to anyone, regardless of whether they are acquaintances or strangers, which is a testament to their altruism and generosity". Her reference to their commitment to "their

organisation" is I assume a reference to the Al-Fath Trust whose letter is at [B/231].

40. Some of the writers of letters in support refer to the Appellant's integration in the UK. That is the subject also of the Appellant's evidence at [22] and [23] of his second witness statement as follows:

> "22. My life has been a struggle in the UK from an emotional perspective and I therefore do not have any ties to Algeria as all my close friends I have in the UK are English speaking and grew up here or under the western culture, much like myself. I feel inherently British, since I started living in the UK since the age of 20, an age where one starts to understand cultures and values in live and grow as an independent individual.
> 23. Even when watching international sports, I find myself being patriotic to the English teams, referring to them as 'we' as was the case for Euro 2021. Since most of my living memories are in the UK, I would find it difficult to adapt to live the way of life back in Algeria."

41. I do not place any weight on the Appellant's suggestion that he would face very significant obstacles to integration in Algeria. There is a high threshold to be met; in effect, that he would not understand how society works sufficiently to participate in that society and form relationships. Although the Appellant has been out of that country for over 20 years, as Mr Avery pointed out, those who have provided letters of support are largely members of the Algerian diaspora in the UK.

42. That does not mean that the Appellant's associations with those persons is to be given any less weight in relation to his private life here, but it does mean that he could forge equivalent friendships in his home country and could benefit the community in Algeria in much the same way. He could also continue his existing friendships remotely and via visits by his friends to what is also (in most cases) their country of origin. Although he was only 20 when he came to the UK, he grew up and was educated in Algeria.

DISCUSSION

43. I turn then to re-make the decision based on the foregoing findings.

44. The Appellant cannot meet Paragraph 276ADE(1)(iii) of the Rules as he fails in relation to the suitability requirements. Even if Ms Ferguson were correct to say that I could consider whether the Appellant should fail on that basis, the Respondent having decided that he should, I would have concluded that issue against him. I have found that the Appellant was well aware that the documents he submitted in relation to his employment were false. Whilst he may well have been motivated to take that course by the difficulty otherwise in proving that employment, that does not justify his

obtaining and use of those documents which he knew not to be genuine.

45. I accept however that the Appellant has been in the UK now for over twenty-two years, having arrived here in 2001. I accept that in that time he has worked here, has carried out charity work and has formed friendships albeit largely with others from the Algerian diaspora in the UK. I accept his evidence that, notwithstanding that most of his friends and his charity associations are linked with Algeria, he considers himself to be integrated here.

46. I also take into account that the Appellant has been in the UK for over twenty years, a period which the Rules themselves recognise as deserving of some weight when considering an individual's private life. Were it not for the suitability requirements, the Appellant would undoubtedly have met the Rules in that regard. I give that period of residence more than the usual little weight required by Section 117B for that reason.

47. The Appellant speaks English and has been financially independent. Those are both however neutral factors under Section 117B.

48. I have not accepted that the Appellant would face very significant obstacles to his integration in Algeria. He has worked here without permission to do so. In Algeria, he would be able to work. Whilst he might find it difficult to readjust given his length of absence from that country, I am not persuaded that he would face any real hardship on his return. He is a healthy man who is still relatively young (early forties). He was twenty-one when he left Algeria and will know how society in that country works. He can maintain his contacts with friends in the UK via remote means. There is no reason he cannot resume his charitable work on return with other similar organisations.

49. I have accepted that the Appellant has a twin brother in the UK who it appears may also be without status. In any event, the Appellant does not rely on that relationship as reason why he cannot return to Algeria (indeed quite the opposite; he seeks to distance himself from his brother's case).

50. Against the interference with the Appellant's private life, I have to weigh the public interest. Although the Appellant would meet the Rules were it not for the suitability requirements, the fact remains that the Appellant used false documents. That is undermining of the maintenance of effective immigration control. The failure to meet suitability requirements also means that the Appellant cannot satisfy the Rules. As such, that is also a factor relevant to the maintenance of effective immigration control.

51. This is a borderline case based on the weight to be given to the Appellant's private life against the weight to be placed on the public

interest in maintaining effective immigration control. The ultimate question however in conducting the balancing exercise outside the Rules is whether removal would have unjustifiably harsh consequences for the Appellant. Although the Appellant has been in the UK for a lengthy period and has adjusted to life in the UK, as I have found above, there will be no real hardship for him in readjusting to life in Algeria where he will be able to work to support himself. He can retain his friendships and if he wishes to do so resume his charitable work with other organisations in his home country.

52. For those reasons, I have concluded that the consequences for the Appellant of removal will not be unjustifiably harsh. I therefore conclude that the Respondent's decision is not disproportionate. Removal of the Appellant to Algeria will not breach his Article 8 rights.

CONCLUSION

53. The Respondent's decision is not a disproportionate interference with the Appellant's Article 8 rights. Removal will not therefore breach section 6 Human Rights Act 1998. I therefore dismiss the appeal.

NOTICE OF DECISION

The appeal is dismissed on human rights grounds. Removal of the Appellant will not breach section 6 Human Rights Act 1998.

L K Smith
Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

10 May 2024

APPENDIX: ERROR OF LAW DECISION

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004905

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THE IMMIGRATION ACTS

Decision & Reasons Issued:

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Before

UPPER TRIBUNAL JUDGE SMITH

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

MOHAMED DALI
[NO ANONYMITY DIRECTION MADE]

Respondent

Representation:
For the Appellant: Mr N Wain, Senior Home Office Presenting Officer
For the Respondent: Mr R Layne, Counsel instructed by Black Antelope Law

Heard at Field House on Tuesday 6 February 2024

DECISION AND REASONS

BACKGROUND

1. This is an appeal by the Secretary of State. For ease of reference, I refer to the parties as they were in the First-tier Tribunal. The Respondent appeals against the decision of First-tier Tribunal Judge Moffatt promulgated on 25 August 2023 ("the Decision") allowing the

Appellant's appeal against the Respondent's decision dated 11 February 2022 refusing the Appellant's human rights claim.

2. It is worthy of note at this stage that Judge Moffatt states at [1] of the Decision that the appeal is against the refusal of an application for leave to remain on the basis of long residence. That is the context of the human rights claim but it is the refusal of that claim which is the decision under appeal and the only ground of appeal available to the Appellant is that the decision breaches section 6 Human Rights Act 1998 (HRA) (in this case based on the Appellant's Article 8 ECHR rights).

3. The Appellant is a national of Algeria. He claims to have entered the UK in 2001. He therefore claims to be entitled to leave to remain based on twenty years' continuous residence. The Respondent did not accept that he had been in the UK for that period. The Respondent did not therefore accept that the Appellant could meet the Immigration Rules ("the Rules") in that regard.

4. Following the Respondent's decision on his application, and the Respondent's review of that decision, the Appellant admitted that he had used false documents when making his application, namely employment documents and bank statements intended to show his period of residence.

5. The Judge found that the Appellant had been in the UK for as long as he claimed. She therefore found that the Appellant could meet paragraph 276ADE(1)(iii) of the Rules ("Paragraph 276ADE(1)(iii)"). She purported to allow the appeal on human rights grounds for that reason alone.

6. The Respondent appeals the Decision on three grounds as follows:

   Ground one: the Judge erred in her finding that the Appellant meets Paragraph 276ADE(1)(iii) as the Judge failed to address her mind to the issue of suitability. That was relevant given the Appellant's admission that he had used false documents.

   Ground two: the Judge erred in her acceptance of the witness evidence. It is said that the Judge considered that in isolation rather than in the round.

   Ground three: the Judge erred in finding the Appellant credible in light of his admission of dishonesty and has erred by giving him credit for that admission.

7. Permission to appeal was refused by First-tier Tribunal Athwal on 22 September 2023 in the following terms:

   "..2. The first ground asserts that the Judge made a material misdirection in law. He records that the Appellant submitted fraudulent documents as part of his application, consequently he

> cannot satisfy the suitability requirements. The subsequent finding, that the Appellant satisfies paragraph 276ADE(1)(iii), is therefore a material misdirection in law. This does not raise an arguable error of law because paragraph S-LTR.2.1 states that S-LTR.2.2 is discretionary. The assertion that the Appellant could not satisfy the suitability requirements appears to be a disagreement with the Judge's analysis of the facts but the Respondent has not argued that the finding is perverse.
> 3. The second ground asserts that the Judge misdirected himself by failing to consider the evidence in the round. He artificially separating [sic] the evidence of two witnesses, deemed to be credible, from the evidence of the Appellant and other witnesses, and failed to properly consider the evidence of the credible witnesses through the prism of the Appellant's damaged credibility. This ground does not raise an arguable error of law. The Judge has properly considered each element of evidence separately and at the end weighed it as a whole and found that certain evidence carries more weight than other evidence. The fact that the Appellant may have lied or bolstered certain parts of his evidence does not necessarily mean that all his evidence is tainted.
> 4. The third ground asserts that the Judge wrongly awards the Appellant weight when carrying out his assessment of his credibility as a whole. The Appellant has acted dishonestly and the fact that he admitted to it in the hearing should not be given weight. This does not raise an arguable error of law. When the decision is read as a whole it is clear that the Judge has factored in all aspects of the Appellant's evidence when considering what weight he should give it."

8. The Respondent renewed his application for permission to appeal to this Tribunal on essentially the same grounds. Permission was granted by Upper Tribunal Judge Jackson on 27 December 2023 in the following terms so far as relevant:

> ".. The grounds of appeal are all arguable. It is arguably inconsistent to find positive credibility in an admission of dishonesty and reliance on false documentation and other points damaging to credibility, including proforma letters of support. The Tribunal has not expressly considered the full requirements of paragraph 276ADE of the Immigration Rules beyond a simple period of residence, given that there is also a suitability requirement which on its face would not be met by the submission of false documentation and no other consideration of Article 8.
>
> The First-tier Tribunal's decision does contain an arguable error of law capable of affecting the outcome of the appeal and permission to appeal is therefore granted."

9. The matter comes before me to decide whether the Decision contains an error of law. If I conclude that it does, I must then decide whether to set aside the Decision in consequence. If I do so, I must then go to on re-make the decision or remit the appeal to the First-tier Tribunal for re-making.

10. I had before me a bundle of documents including those relevant to the error of law issue, the Appellant's bundle ([AB/xx]) and skeleton

argument before the First-tier Tribunal and the Respondent's bundle before that Tribunal.

11. Having heard submissions from Mr Wain, Mr Layne conceded that the error of law was made out on the first and third grounds. He did not concede the second ground. I accepted the concession made. I reserved my decision in relation to the second ground which I indicated I would provide in writing. I indicated that I would also provide my reasons in writing for accepting the concession. I now turn to do that.

DISCUSSION

Grounds one and three

12. I take these two grounds together given the concession made and what I see as an overlap between them.

13. As Mr Wain pointed out, although it was accepted that the Respondent had not made any decision refusing the Appellant's application on suitability grounds and that the decision in that regard was a discretionary one, the Respondent could not at that time do so relying on falsity of the documents provided by the Appellant as he had not at that time admitted that they were not genuine. Mr Layne accepted that chronology. The admission by the Appellant came in his witness statement in July 2023.

14. Mr Wain accepted that the Respondent's Presenting Officer had not raised the suitability issue in submissions before Judge Moffatt. He drew my attention to the decision in Lata (FtT: principal controversial issues) [2023] UKUT 00163. The majority of the guidance in that case does not avail the Respondent as it makes clear that it is for the parties to define the issues. However, at [7] of the guidance the point is made that if an issue is "Robinson obvious" then a Judge can be expected to deal with it of his or her own volition. Mr Wain submitted that this was one such issue.

15. The difficulty in this case arises due to the late admission by the Appellant of his dishonesty. The Judge made a clear finding at [46] of the Decision that the Appellant met the requirements of Paragraph 276ADE(1)(iii). It is evident on the face of that rule that it includes a requirement in relation to suitability. It was or should have been obvious to the Judge that suitability was a relevant issue given the late admission of dishonesty. She should have considered it.

16. A rather wider problem arises when one looks at the third ground. Mr Wain submitted that the Appellant's admission of dishonesty had been weighed in his favour when it should have weighed against. That led to a discussion of how the Judge had reached her conclusion that the appeal should be allowed on human rights grounds. This is a point alluded to in Judge Jackson's grant of permission.

17. As I have already pointed out, the only ground of appeal available to the Appellant was that the decision under appeal (that is to say the refusal of his human rights claim and not the refusal of the application for leave to remain itself) is unlawful as contrary to section 6 HRA.

18. The Judge, having made the finding that the evidence of the Appellant's witnesses should be accepted in relation to length of residence (to which I come below), said this in conclusion:

> "46. Weighing the evidence in this very finely balanced case, I find that although the documentary evidence in this case is not reliable, that the appellant has demonstrated on the balance of probabilities through his witnesses that he has lived continuously in the UK since 2001 and that, at the date of application, he had lived continuously in the UK for a period of 20 years. Accordingly, I find that the appellant can meet the requirements of paragraph 276ADE(1)(iii) of the Immigration Rules."

19. I have already dealt with the last sentence of that paragraph which ignores the suitability requirement. However, the Judge has made no attempt whatsoever to place that finding in the context of the only issue she had to determine namely whether the decision under appeal was a disproportionate interference with the Appellant's Article 8 rights.

20. If there had been no issue whether the Appellant met every aspect of the rule in question, I might have been inclined to find that the error could not make any difference. If an appellant meets the Rules, that is certainly a strong indication that the appeal should succeed on human rights grounds.

21. However, here one has an admission of dishonesty which is relevant not only to the suitability requirement of the relevant rule but is also pertinent to the proportionality balance when one is considering Article 8 ECHR, and the respective weight which should be given to the Appellant's private life and the public interest.

22. If the Judge had gone on to conduct that proportionality assessment, the importance of the admission of dishonesty would have been considered which might then have rendered the error in ground one to be immaterial. However, since she did not, for this reason combined with the failure to address the suitability requirement in Paragraph 276ADE, there is an error of law.

23. Before considering how that error of law should be dealt with, I deal with the Respondent's second ground which also has an overlap with the third ground in relation to the Appellant's own credibility.

Ground two

24. This is a challenge to the Judge's finding that the Appellant has been continuously resident in the UK for twenty years, having accepted the evidence put forward in this regard.

25. Mr Wain in his oral submissions pointed me to what was said about the Appellant's witness, Mr Zaouche (upon whose evidence the Judge placed weight) at [38] of the Decision as follows:

> "Mehdi Zaouche's oral evidence is consistent with his letter written on 26 September 2020. In his 2020 letter, he states that he met the appellant for the last 19 years, since 2001. The letter is in identical terms to that of Nadjib Arzim which reduces weight which can be attached to the letters. Mr Zaouche has also provided a witness statement. He sets out how he knows the appellant and states that he met the appellant again in London in 2001, having left Algeria in 1993. Whilst the letter on its own would carry limited weight because of its similarity to the letter provided by Mr Arzim. Mr Zaouche's witness statement and oral evidence were consistent with the contents of the letter such that I can attach some weight to it."

26. It was suggested by Mr Wain that the weight given to Mr Zaouche's evidence in that paragraph is inconsistent with what is said by the Judge at [43] of the Decision as follows:

> "I have found that two of the appellant's witnesses were credible, Mr Ezziane and Mr Ghellache. Mr Ezziane puts the appellant in the UK in 2003 and Mr Ghellache since 2001. Whilst I attached little weight to the letter written by Mr Zaouche, he also provided oral evidence and a written witness statement all of which have been internally consistent. He states that the appellant has been in the UK since 2001."

27. I can discern no inconsistency between the Judge's findings in this regard. The Judge placed little weight on the letter but was willing to place weight on the witness statement, having heard from Mr Zaouche. That was the Judge's prerogative.

28. I am also unable to accept what is said in the pleaded grounds about the Judge's findings on credibility for the following reasons.

29. First, although the Judge does express concerns at [36] of the Decision about the character references due to some internal inconsistencies and notes at [37] that letters in support are "very similar in wording", I can find no "issues highlighted with the other witnesses" as is suggested in the pleaded grounds.

30. Indeed, the finding made by the Judge places rather greater weight on the evidence of Mr Ghellache and Mr Ezziane. I do not need to deal with the finding at [40] of the Decision in relation to Mr Ezziane since, as the Judge pointed out at [43] of the Decision, he could only place the Appellant in the UK since 2003.

31. The Judge deals with Mr Ghellache's evidence at [39] of the Decision as follows:

> "I found the oral evidence and written evidence of Lachene Ghellache to be more helpful. His witness statement describes how the appellant has become involved with his family. He mentions events particularly since 2005 where he has undertaken charity work with the appellant. He states that he has known the appellant since 2001. His oral evidence and his witness statement are consistent. I found his evidence to be credible."

32. For those reasons, the Judge was entitled to rely on the evidence of Mr Ghellache and Mr Zaouche as she has done at [43] of the Decision.

33. Second, I do not accept as was said in the grounds that the Judge has considered that evidence in isolation. Between the findings about Mr Zaouche's and Mr Ghellache's evidence and her conclusion, the Judge said this:

> "41. Having considered all the evidence in the round, I find that the majority of the documentary evidence served by the appellant is not reliable, although the respondent has not taken issue with the tenancy agreements, and attach little weight to it for the reasons set out above. I find that the appellant's credibility is damaged because of the unreliability of the documentary evidence and the inconsistencies in the history of the addresses which he has set out in his witness statement.
> 42. Whilst the appellant's credibility is damaged, I did not find him to lack all credibility. He has been honest with the Tribunal about the deficiencies of the employment evidence and there is ample evidence to support his contention that he did carry out voluntary work and frequented the coffee shop in Palmerstone Road. He has accepted that he has worked illegally since being in the UK."

34. I have mentioned above the cross-over between this ground and the third ground. That relates to what is said at [42] of the Decision. This is the only point which has given me some concern in relation to the second ground.

35. I agree with the Respondent that it might be said to be perverse to give someone credit for admitting to having been dishonest until quite a late stage in the proceedings. It is notable that in his earlier witness statement at [AB/3], the Appellant describes the employment documents which he now admits were false as "accurate and genuine documents" ([14]). That witness statement contains a statement of truth and by putting that and the documents which he now admits were false before the Tribunal, it appears that he was willing at one time to lie also to the Tribunal. That is hardly a ringing endorsement of his credibility or something which should be given credit.

36. Having considered what is said at [42] of the Decision, however, in the context of the other findings, I am satisfied that the Judge's finding

about period of residence can stand. She does after all accept that the Appellant's credibility is damaged. It is open to her to find that limited aspects of the Appellant's case are to be accepted particularly where those are supported by other evidence. Her remark about the Appellant's admission as to the false documents is just that.

37. There is no indication at [42] of the Decision that the Judge has accepted other of the Appellant's testimony where that is not supported by other evidence. However, she does go on to say at [44] of the Decision the following about the Appellant's own evidence:

> "The appellant's narrative of how he came to be living in Walthamstow is credible and has been consistent. His date of arrival in the UK has been consistent across his application in 2011 and in the application. It is credible that he would seek out those whom he knew in Algeria since being a little boy and whom he would turn to for support. That the appellant would work and socialise in the coffee shop in Palmerstone Road at the heart of the Algerian community in London is credible."

38. I have considered what is there said in the context of the Judge's remark at [42] of the Decision about the Appellant's credibility. However, once again, what is there accepted by the Judge is partially supported by other evidence which the Judge has accepted. The final sentence is supported by the evidence of Mr Ezziane (see [40] of the Decision) which the Judge accepts as credible. The acceptance of other of the Appellant's evidence is based on consistency between various pieces of evidence. Simply because the Appellant's credit is damaged by his willingness to lie about one aspect of his case does not mean that the Judge is not entitled to accept other aspects, even where those aspects are at the heart of the appeal.

39. Overall, when one looks at the Judge's findings between [28] and [45] of the Decision, I have concluded that she has carefully considered all the evidence, weighed it all in the balance and has reached a conclusion at [46] of the Decision which was open to her on that evidence in relation to period of residence.

40. For those reasons, I preserve the Judge's findings about the evidence and her conclusion at [46] of the Decision that the Appellant has lived continuously in the UK since 2001 and therefore for twenty years as at date of application.

CONCLUSION AND NEXT STEPS

41. For the reasons set out above, I have concluded that there is an error made out on grounds one and three in the Judge's finding that the Appellant meets Paragraph 276ADE(1)(iii) and her failure to consider whether the Respondent's decision is unlawful under the HRA. I have however accepted that the Judge was entitled on the evidence to find that the Appellant has been continuously resident in the UK since 2001

and for that reason satisfies the residence requirement in Paragraph 276ADE(1)(iii). I preserve that finding.

42. I set aside however the final sentence of [46] of the Decision. I will need to consider on re-making whether the suitability requirement in Paragraph 276ADE is met. Mr Wain agreed that, since this is a discretionary requirement, the Respondent ought to make a supplementary decision dealing formally with that issue.

43. It was agreed that if I did not find an error made out on the Respondent's ground two, the appeal could remain in this Tribunal for re-making. I have given a direction for the Appellant to provide further evidence if he wishes to do so. As I have noted several times, the issue for me is whether the Respondent's decision under appeal breaches the Appellant's Article 8 rights and not solely whether his application based on long residence meets the Rules.

44. The Judge has made errors of law in the determination of this appeal. I therefore set aside the final sentence of [46] of the Decision. The appeal is retained for re-making in this Tribunal with the directions set out below.

NOTICE OF DECISION

The Decision of First-tier Tribunal Judge Moffatt promulgated on 25 August 2023 involves the making of errors of law. I set aside the final sentence of [46] of the Decision. I preserve the findings made regarding the Appellant's period of residence in the UK. I make the following directions for the rehearing of this appeal.

DIRECTIONS

1. **Within 28 days from the date when this decision is sent, the Respondent is to file with the Tribunal and serve on the Appellant a decision dealing with the suitability requirement in relation to Paragraph 276ADE(1)(iii).**

2. **Within 28 days thereafter, the Appellant is to file with the Tribunal and serve on the Respondent any further evidence on which he wishes to rely at the resumed hearing.**

3. **The re-hearing of this appeal is to be listed before me for a face-to-face hearing on the first available date after 56 days from when this decision is sent. Time estimate ½ day. No interpreter will be booked unless the Tribunal is informed that one is required within 14 days from the date when this decision is sent.**

L K Smith
Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

7 February 2024