



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/02607/2013

THE IMMIGRATION ACTS

Heard at Field House
On 3 December 2013

Determination Promulgated
On 10 December 2013

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

L S
(Anonymity Direction Made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Akohene a solicitor from Afrifa and Partners

For the Respondent: Mr S Whitwell a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Sierra Leone who was born on 16 May 1936. She has been given permission to appeal the determination of First-Tier Tribunal Judge Kelsey ("the FTTJ") who dismissed her appeal against the respondent's decision of 2 January 2013 to refuse her application for leave to remain in the UK on the basis of 14 years residence under paragraph 276B of the Immigration Rules and on human rights grounds.

2. The appellant entered the UK on 14 May 1992 and was granted six months leave to enter as a visitor. Since that expired she has had no lawful leave to remain here. She submitted her application to the respondent on 24 May 2006 claiming that she had achieved at least 14 years continuous residence. The respondent did not make the decision on her application until 2 January 2013. By that stage the long residence provisions of paragraph 276B were no longer part of the Immigration Rules but the respondent applied them because they were in force at the time of the application.
3. The respondent concluded that the appellant had failed to establish 14 years continuous residence. While she had registered with her GP there were periods during which she had not been treated and could have left the country. The three passports she had submitted covering periods from October 1991 to October 1996, December 2001 to December 2006 and October 2007 to October 2012 did not cover the whole of the period of claimed continuous residence. The application was refused under the Immigration Rules and on human rights grounds.
4. The appellant appealed and the FTTJ heard her appeal on 15 April 2013. Both parties were represented and oral evidence was given by the appellant and her sponsor who said that she was the appellant's niece.
5. The FTTJ found that there was little documentary evidence about the appellant's claimed period of residence. There was no documentary evidence and conflicting oral evidence as to the relationship between the appellant and the sponsor. There was no evidence from any other relatives or friends. The documentary evidence was that obtained from the appellant's GP's surgery and three passports. After considering this documentary evidence and the oral evidence as well as the delay by the respondent the FTTJ concluded that the appellant had failed to show on the balance of probabilities that she had lived in the UK continuously for the required period without ever leaving the country.
6. The FTTJ went on to consider the Article 8 human rights grounds concluding that it would be a proportionate interference with her human rights to remove her from the UK. He dismissed the appeal.
7. The appellant applied for permission to appeal which was refused by a judge in the First-Tier Tribunal. However, on renewal to the Upper Tribunal permission was granted on the basis that the FTTJ "has arguably not taken proper account of the seven years residence which the appellant has subsequently accrued, in assessing the Article 8 aspects of her appeal."
8. I allowed Mr Akohene to argue all the grounds of appeal. These are that the FTTJ erred in law by applying an incorrect standard of proof, reached perverse, illogical and unreasonable conclusions on the evidence, failed to take into account all the relevant evidence, took into account irrelevant evidence, failed properly to take into account the respondent's delay in

dealing with the application, failed to recognise that the long residence rule was designed to deal with those who had managed to stay in the UK for 14 years or more without lawful authority and failed to apply relevant policies.

9. There is a Rule 24 response from the respondent which submits that the FTTJ did not err in law and there was no demonstrable significance arising from the delay in dealing with the application.
10. Mr Akohene relied on the grounds of appeal. He submitted that in his findings and reasons the FTTJ did not accurately reflect the evidence given which he had set out earlier in the determination. He appeared to have concluded that the appellant had been issued with a passport for a period not covered by the three passports she had produced. In the alternative he had not reached a clear conclusion as to whether the appellant had been issued with a passport for the five-year period referred to in paragraph 20 of the determination.
11. Mr Akohene submitted that the FTTJ had not applied the correct burden and standard of proof. I drew his attention to what was said in the first sentence of paragraph 16 and asked whether there was any passage in the determination which indicated that this had not been applied. He was not able to point me to any particular passage but argued that this was a conclusion that should be drawn from the tenor of the determination. The FTTJ had not looked at the evidence in the round. For example, if he had looked at the whole of the extensive GP records he would have seen that there was a pattern which indicated that there were periods during which the appellant did not need to go to her doctor. They were not only during the periods not covered by her passports. He submitted that the FTTJ failed to take into account the evidence that the sponsor's children looked after the appellant when the sponsor visited Sierra Leone. As the children had not given oral evidence or provided witness statements I asked him to point out where this evidence could be found. He drew my attention to paragraph 7 of the sponsor's witness statement dated 18 March 2013. The only relevant passage is; "she relies on my support and that of my children for all her needs including emotional support".
12. Mr Whitwell submitted that the appellant and the sponsor had given conflicting evidence about whether the appellant had always renewed her passport. There were several periods during which the appellant had not visited her GP. He argued that the FTTJ reached conclusions open to him on all the evidence. The respondent had dealt with the question of exceptional circumstances in paragraph 31 to 33 of the refusal letter. There was an inconsistency between the evidence of the appellant and the documentary evidence. A letter from Chase Farm Hospital dated 23 September 2008 indicated that the appellant came to the UK in 1996 not 1992.
13. Mr Whitwell accepted that the FTTJ referred to Appendix FM in paragraph 17 of the determination but submitted that he dealt with the Article 8 grounds under the Strasbourg jurisprudence in reaching his conclusions.

14. I reserved my determination.
15. I find that the FTTJ did not apply an incorrect burden or standard of proof. This is correctly stated in paragraph 16 and there is nothing in the determination to indicate that it was not applied. It was open to the FTTJ to say that there was very little documentary evidence which made the decision difficult. An individual who had been in the UK for as long as the appellant claimed, since 1992, would often be able to produce more documentary evidence to support the claim. The FTTJ did consider the reasons given by the appellant as to why she claimed not to be able to do so and he gave detailed consideration to the documentation she did produce; the passports and the medical records, in paragraphs 19, 20 and 21. The FTTJ did not say that because there were periods during which the appellant did not go and see her GP this meant that she was not in the UK. What he said, and was entitled to say, was that the lack of records of visits meant that she was unable to show that she was in the UK during these periods.
16. There is no evidence to support the contention that all non-EU nationals entering the UK have to fill out entry cards at the port of entry or that, if they do, the respondent has access to this information covering the period since 1992.
17. Whilst the grounds allege that there was evidence that the sponsor's children looked after the appellant whilst the sponsor was out of this country visiting Sierra Leone I find that the only passage relied on, in paragraph 7 of the sponsor's witness statement, do not support the contention. The sponsor could have dealt with this in more detail. Her children could have supplied witness statements or attended the hearing to give oral evidence. None of this was done.
18. I can find no inconsistency between the evidence recorded by the FTTJ and the factors taken into account in his findings and conclusions. The reference to "the missing passport" in paragraph 20 is, as the context makes clear, no more than shorthand for the period during which the appellant could have had another passport.
19. Whilst the grounds allege that the FTTJ failed to take into account all the relevant evidence and failed to make proper findings on all the evidence this has not been particularised beyond the matters which I have already addressed. I can find no indication that the FTTJ failed to recognise that the long residence provisions in the Immigration Rules were designed to grant leave to remain to individuals who had managed to stay here for 14 years or more without lawful authority.
20. In paragraph 17 the FTTJ refers to taking into account the provisions of Appendix FM of the Immigration Rules. I accept that in paragraph 24 the FTTJ deals with the Article 8 grounds under the Strasbourg jurisprudence and

makes no mention of Appendix FM. However, if this is an error it is an error without consequence because the date of the application means that these grounds fell to be considered under the Strasbourg jurisprudence rather than Appendix FM. Furthermore, it has not been suggested that the appellant could succeed under Appendix FM.

21. There is no indication that the appellant's representative argued the point relating to the respondent's policies at the hearing but it was raised in the written submissions at pages 1 to 3 of the bundle before the FTTJ. What are said to be extracts from the relevant policies are between pages 11 and 14. The extract at page 12 relates to delay by the respondent. The extract at page 14 relates to "Elderly Persons". It reads; "In terms of removal, ministers have agreed that a person's age is not, by itself, a realistic or reliable indicator of a person's health, mobility or ability to care for himself/herself. Many older people are able to enjoy active and independent lives. Cases must be assessed on their individual merits. The onus is on the applicant to show that there are extenuating circumstances, such as particularly poor health, close dependency on family members in the UK, coupled with a lack of family and care facilities in the country of origin, which might warrant a grant of leave".
22. Whilst the grounds allege that the respondent failed to consider her policy on delay this is incorrect. It was addressed at paragraph 31 to 33 of the refusal letter. The grounds do not address these paragraphs or suggest that they are flawed in any way. The FTTJ did make reference to the delay by the respondent in paragraph 23 and I find that, in the context of the facts of this case that was sufficient.
23. Whilst neither the respondent nor the FTTJ made specific reference to the policy in relation to elderly persons the relevant factors were addressed. Whilst there was evidence of some ill-health there was no indication that this amounted to particularly poor health. Dependency on the sponsor and to some extent her children was addressed and there was no suggestion of any other dependency on family members in the UK. In relation to family and care facilities in Sierra Leone the FTTJ was not persuaded that these would not be available.
24. The Upper Tribunal judge who granted permission to appeal said that the FTTJ "has arguably not taken proper account of the seven years residence which the appellant has subsequently accrued, in assessing the Article 8 aspects of her appeal." I infer that this may be a reference to the period since the appellant made her application in 1996 during which her passports were with the respondent. However, if the appellant had another passport or passports she would have been able to leave the UK during that period. I find that the FTTJ's reasoning in relation to the Article 8 grounds adequately addresses the whole of the period during which the appellant claimed to have been in the UK.

- 25. I find that the FTTJ reached conclusions open to him on all the evidence. Neither his findings nor his reasons are remotely perverse. There is no error of law.

- 26. The anonymity direction made by the FTTJ should continue in force. I make an order under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant.

- 27. I find that the FTTJ did not err in law and I uphold his determination.

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Signed
Upper Tribunal Judge Moulden

Date 4 December 2013