



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/00180/2018

THE IMMIGRATION ACTS

Heard at Field House
On 27 February 2019

Decision & Reasons Promulgated
On 17 April 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

ERNEST SMITH OKUMA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Jesurum of Counsel instructed by SMK Solicitors
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. This is an appeal against the decision of First-tier Tribunal Judge Graham, promulgated on 1 August 2018, dismissing on human rights grounds the appeal against a decision of the Respondent dated 29 November 2017 refusing leave to remain in the United Kingdom.
2. The Appellant is a citizen of Nigeria born on 15 May 1970.

3. The Appellant has claimed that he entered the United Kingdom in 1994. The Respondent's rehearsal of the Appellant's immigration history set out in the decision letter of 27 November 2017, and repeated in the cover sheet to the Respondent's bundle before the First-tier Tribunal, states that the Appellant made an application for indefinite leave to remain on the basis of 'Long Residency (14 years)' on 4 December 2008, which was refused on 22 April 2009. The application that has led to the decision that is the subject of the appeal was an application for leave to remain – treated as a human rights claim – made on 17 June 2016.
4. The application, made by way of form FLR(FP) signed on 8 June 2016 (Respondent's bundle A1-A50) was based on private life established in the UK (A3 - see also covering letter dated 17 June 2016 at D1). The covering letter with the application dated 17 June 2016, drafted by the Appellant's solicitors, indicated reliance was placed on paragraph 276ADE(1)(iii) of the Immigration Rules: it was claimed that the Appellant had lived continuously in the UK for at least 20 years.
5. Reliance appears to have been placed exclusively on private life – rather than family life – notwithstanding that the Appellant's supporting documents include a birth certificate for a son born on 11 January 2015 (C1) and a daughter born on 18 January 2017 (C2) (Necessarily the daughter could not have featured in the application when initially made because her birth post-dates the signing of the application form.) There is further reference to the children in the context of correspondence between the Respondent and the Appellant's solicitors (e.g. see D7, where, in a letter dated 12 April 2017, the solicitors referred to the Appellant's child – in the singular – living with him. The Appellant offers an explanation for this circumstance in a witness statement dated 8 May 2017 (F4).
6. In his application the Appellant repeated his claim to have entered the UK in 1994 (A5, and see also A30-32)). He stated that he was not working in the UK (A7), but that he received financial support from friends as and when required (A9); notwithstanding, he included in support of his application purported evidence of past employment (e.g. see list of documents at D1-D3). In this context the covering letter stated: *"It would not be out of place to mention that; [the Appellant] has previously worked in the UK, in order to meet his daily survival needs.... However; as instructed, for the last about 1 year (since early 2015); [the Appellant] has been financially supported by friends in the local community"* (D3).
7. The correspondence in the course of the application includes letters from the Appellant's solicitors submitting further supporting documents including from HMRC. In this context the solicitors' letter of 26 April 2017 (D8) refers to *"HMRC employment/self-employment record of the Applicant (alias Geoffrey Ernest Smith)"*.

However, nothing further is stated in the letter by way of explanation as to the supposed use of such an alias.

8. The supporting documents included in the Respondent's bundle at Annex E include documents in the stylisation of names 'Ernest Smith Okuma' (E1, E2, E5-E10, E13, E14), 'E S Okuma' (E11, E12, E15-E18), 'Ernest Smith' (E3 and E4), and 'Geoffrey Ernest Smith' (E22).
9. Further to this, National Insurance numbers appear as: [TN ~ B] for Ernest Smith Okuma and E S Okuma; and [NS ~ B] for Ernest Smith and Geoffrey Ernest Smith. A P60 in the name Ernest Smith Okuma for 2005/2006 (reproduced at E1 and E2 in slightly different formats) contains no national insurance number.
10. I also note the following. The bulk of the employment documentation submitted in the course of the application relates to the identity 'Ernest Smith Okuma' with the National Insurance number [TN ~ B]. Only two documents are in the identity Ernest Smith, both carrying the National Insurance number [NS ~ B]. These documents are a P60 for 2004/2005 (E3), and a P45 showing a leaving date of 28 May 2004 (E4). However, an email dated 6 April 2017 from the Appellant's representatives to HMRC seeking supporting evidence names their client as Ernest Smith Okuma, but provides the National Insurance number that appears on the documents in the name Ernest Smith (E20-21). The letter refers to this as "*Our client's national insurance number*". The letter also makes reference to National Insurance numbers [TN ~ B] and [TN ~ M] on the basis that "*We were also advised to provide our client's temporary NI numbers*".
11. The response from HMRC by letter dated 24 April 2017 (E22) is headed 'Re: GEOFFREY ERNEST SMITH', and does not in its content appear to recognise or otherwise engage with the difference in name. The information provided in the letter is limited to the period 1997/1998 to 2005/2006 pursuant to the terms of the request in the solicitors' email.
12. The Respondent refused the Appellant's application for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 27 November 2017. This letter in part treats the application as having been based on family life with the Appellant's son, and also acknowledges the Appellant's daughter who lives with her mother. The application is refused under the so-called 'parent route' under Appendix FM of the Immigration Rules, and also in respect of private life; the decision-maker also concludes that there are no exceptional circumstances to warrant the grant of leave to remain outside the provisions of the Rules.

13. In respect of the Appellant's claimed length of residence in the UK the RFRL states:

"You therefore claim to have lived in the UK for 21 years but there are inconsistencies with the proof that you have provided and it is not accepted you have lived continuously in the UK for at least 20 years. There is no evidence at all for 1997, which is the first year of your 20 year period¹. Other evidence is provided by various documents, but there are gaps in 1997 and 1999-2004, as photocopies of P60s have been provided. It is made clear in the guidance provided that originals of documents must be provided and photocopies are not acceptable. You have provided a statement from HMRC from 1997 to 2006. This statement contradicts the evidence provided in your P60 for 1997/8, the P60 states you are employed by Seven Sisters Hospital Services Ltd and earn £7,205 gross. The HMRC statement shows no employer or benefit details for the same period. For 1998/9 you have provided a P60 from Alpha Security Services (UK) Ltd declaring Gross Earnings of £7,452.50, but the HMRC statement shows that you were employed by Manpower plc and Xerox limited, and therefore this evidence is considered unreliable."

14. It may be seen that there are broadly two bases for rejecting the Appellant's claim as to length of residence: that he failed to provide original documents; and that there were discrepancies in the documentation provided. Although the Respondent's decision-maker does not expressly identify in terms that there was a different stylisation of name as between, for example the P60s from Seven Sisters Hospital (E13) and the Alpha Security (E10), and the HMRC statement (i.e. the letter dated 24 April 2017 at E22), it is adequately clear from the RFRL that much of the supporting documentation provided with the application prior to the later provision of the HMRC document did not match the information in the HMRC document. Perusal of the documents makes it clear that the discrepancies identified in the RFRL are only examples: none of the employers mentioned in the HMRC document match the employment details provided in the identity Ernest Smith Okuma; the self-employed national insurance contributions identified in the HMRC document are not reconcilable with the absence of any claim of self-employment or any self-employment documents in the application.
15. In short, the record of employment of 'Geoffrey Ernest Smith' shown in the HMRC documents did not match the record of employment of 'Ernest Smith Okuma' demonstrated in the various employment documents submitted in that name, notwithstanding that there was an overlap in the periods shown.

16. The Appellant appealed to the IAC.

¹ It appears that the decision-maker was counting back 20 years from the date of decision rather than, for example, counting 20 years from the claimed date of arrival in the UK, or 20 years back from the date of application, or otherwise seeking to identify any unbroken period of 20 years. In the instant case the period of calculation will make no material difference.

17. In the Grounds of Appeal (reproduced in the Appellant's bundle before the First-tier Tribunal at pages 13-15), amongst other things the Appellant admitted to using Geoffrey Ernest Smith as an alias (paragraph 2.3), and also "*being an overstayer... [using] multiple national insurance numbers*" (paragraph 2.4). Moreover, the Appellant placed particular reliance upon the HMRC document: "*In any event, the official documentation provided by HMRC is sufficient to establish the Appellant's residence in the UK during the period in question*" (paragraph 2.5).
18. In his witness statement before the First-tier Tribunal signed on 4 June 2018 (Appellant's bundle before the First-tier Tribunal at pages 16-19) the Appellant in substance repeated the contents of the Grounds of Appeal: see witness statement at paragraph 7.5: "*... the employment record contained in the HMRC statement reflects the additional jobs I undertook using alias Geoffrey Ernest Smith*". However, no attempt was made in the witness statement to explain why such employment overlapped with employment in the identity of Ernest Smith Okuma, or otherwise why such employment in part post-dated the obtaining of a National Insurance number in the identity of Ernest Smith Okuma. Moreover, no attempt was made to reconcile what might otherwise be seen as a conflict in respect of the number and type of employments held at any one time, and nothing is stated in respect of how the Appellant had been able to assume such an alias (including obtaining official recognition by way of a National Insurance number).
19. The First-tier Tribunal dismissed the Appellant's appeal for the reasons set out in the Decision promulgated on 1 August 2018.
20. The Appellant sought permission to appeal to the Upper Tribunal which was granted by First-tier Tribunal Judge Blundell on 2 January 2019.

Challenge and Discussion

21. The Appellant's Grounds of Appeal submitted in support of the application for permission to appeal to the Upper Tribunal pleaded two bases of challenge: a failure to have regard to material evidence, and unfair procedure.
22. The first basis of challenge submits that the Judge was in error in stating at paragraph 14 of the Decision that the Appellant had "*failed to submit documents*" in the name of his claimed alias Geoffrey Ernest Smith. It is pleaded that the Judge was "*factually incorrect*" because the Appellant had submitted the HMRC document dated 24 April 2017 (E22 of the Respondent's bundle). The Grounds plead "*It is therefore*

arguable that the FTJ failed to have regard to material evidence before her which was crucial to the Appellant's case, particularly to the continuous 20 years long residence". (See Grounds at paragraph 3.)

23. Also pleaded under the first head of challenge is a submission that the Judge was wrongly critical of the Appellant's failure to provide original documentation for 1999–2004 in circumstances where it was his case that such documents had previously been presented to the Respondent in the course of his earlier application and the originals not returned (Grounds at paragraph 4).
24. The second head of challenge – unfair procedure – seems in substance for the most part to repeat the allegations of the second limb of the first head under a different guise. It is argued that the Judge failed to have proper regard to documents covering the period 1999–2004, specifying pages 30-71 of the Appellant's bundle before the First-tier Tribunal. Many of the documents at those pages are the photocopied documents that are the subject of the previous ground; some are in the identity of the supposed alias; however, there are additionally purported tenancy documents, and letters from BT to 'Mr S Ernest'.
25. In material part the grant of permission to appeal is in the following terms:

"[The Appellant] maintained before Judge Graham that he had used the alias Geoffrey Ernest Smith in order to work unlawfully in the UK. Judge Graham found, inter-alia, that there was no evidence in the name of Geoffrey Ernest Smith and that there was no evidence to show that he and the appellant were one and the same person.

It is certainly arguable that the former of the findings I have summarised immediately above was in error. An HMRC document addressed to Geoffrey Ernest Smith appears at page E22 in the respondent's bundle and there is also an HMRC letter for the tax year 2016–2017 loose in the file, bearing not only that name but also the appellant's current address.... If Judge Graham did err in this respect, it will be for the Upper Tribunal to determine whether any such error was material in light, in particular, of the second finding I have summarised above.

The remaining grounds are less impressive but I grant permission on all grounds."

26. Reading the decision of the First-tier Tribunal as a whole, it seems to me that it cannot sustainably be contended that the Judge overlooked or otherwise disregarded the HMRC letter of 24 April 2017. The Judge, by accurately paraphrasing them, demonstrated a familiarity with the contents of the RFRL - which were both informed by, and made cross-reference to, the HMRC letter: see in particular the

decision of the First-tier Tribunal at paragraph 4(i). That the Judge was alert to the HMRC letter is made yet more overt at paragraph 12:

“In his oral evidence the appellant accepted that he had use an alias and a second National Insurance number which explained why the HMRC records and the other documents submitted did not match”.

27. As adverted to in the grant of permission to appeal, the real difficulty for the Appellant was not that he had not submitted evidence from HMRC but that - on the Judge's findings - he had not shown that he was the person who had undertaken the employment to which the HMRC record related.
28. In this context the Judge observed that the Appellant *“could not explain how he obtained documents in the name of Geoffrey Ernest Smith in order to satisfy HMRC and be given a National Insurance number”* (paragraph 12). The Judge also noted the use of the stylisations 'Ernest Smith' and 'Mr S Ernest', in addition to 'Ernest Smith Okuma'. Unsurprisingly, the Judge found these matters undermined the Appellant's credibility. In my judgement in such circumstances it was open to the Judge to find:

“As the appellant is unable to provide any evidence to show that he, Geoffrey Ernest Smith and Ernest Smith are the same person, therefore I am unable to accept documents in these names as evidence of the appellant's residence in the UK” (paragraph 14).

29. Indeed, the Grounds of Appeal do not actually mount a challenge to that crucial finding of the First-tier Tribunal Judge. In my judgement that is ultimately fatal to the challenge raised.
30. Be that as it may, the Judge's phrasing at the first bullet point of paragraph 13 - *“There are no documents submitted in the name of Geoffrey Ernest Smith”* - relates to the contents of the Appellant's bundle. The Appellant's bundle did not contain a copy of the HMRC letter of 24 April 2017, and to this extent this passage in the decision does not support the contention in the Grounds that the Judge overlooked or disregarded the HMRC letter. I accept that the Judge's phrasing at paragraph 14 - *“He admits to using the alias of Geoffrey Ernest Smith but has failed to submit documents in this name”* - is not obviously confined to the contents of the Appellant's bundle. However, bearing in mind that it is otherwise clear that the Judge was alert to the HMRC document, it seems to me that in context what the Judge was saying in such passages was that the Appellant failed to submit any documents that connected him to the identity of Geoffrey Ernest Smith.

31. The grant of permission to appeal identifies a further document "*loose in the file*", being an HMRC annual tax summary in the name Geoffrey Ernest Smith for the tax year 2016/2017. (This document was not mentioned and was not the subject of any express submission in the grounds in support of the application for permission to appeal.)
32. Mr Jesurum argued that irrespective of whether or not the Judge had in substance demonstrated awareness of, and/or had otherwise taken into account, the HMRC letter of 24 April 2017, plainly there was no overt reference to the 2016/2017 document, and it could not otherwise be inferred that the Judge had taken it into account.
33. That may be so, but I am not persuaded that this is in any way material. The finding that the Judge made to the effect that the Appellant had not demonstrated that he was connected to, or had ever been employed in, the identity of Geoffrey Ernest Smith applies just as much to this document: this document does not advance any better evidence of any connection to the Appellant. The fact that the address on the document is also the Appellant's address does not take the matter beyond the Judge's observations at paragraph 12 in respect of obtaining personal information and documents at a house of multiple occupation with a common letterbox. In any event, the information displayed on the document – which shows a taxable income from employment of approximately £32,500 – is inconsistent with the Appellant's claim made in his application form signed on 8 June 2016 that he was no longer working. There was no suggestion before the First-tier Tribunal that the Appellant had resumed work: he would have had no permission to work; further, the Skeleton Argument dated 1 June 2018 at paragraph 15 confirms that the Appellant was being financially supported by friends albeit that he was "*willing to work*" – the very clear inference being that he was not working. In any event, yet again, no explanation is apparent as to why the Appellant would have been working as recently as 2016/2017 in a false identity using a National Insurance number that did not relate to him in circumstances where it was his case that he had had his own National Insurance number for a very considerable period of time. It seems to me that far from supporting the Appellant's case this document raises more questions than it answers, and acts to undermine his case. Accordingly, its apparent disregard by the First-tier Tribunal could not, in my judgement, have been materially to the prejudice of the Appellant.
34. In light of my conclusion in respect of the first line of challenge, in my judgement the other submissions raised in the Grounds cannot avail the Appellant. Whilst the Appellant does not place exclusive reliance upon the HMRC record set out in the letter of 24 April 2017, it is nonetheless vital to his case: he cannot succeed only on the basis of the other materials.

35. For completeness I note that in the course of submissions Mr Jesurum argued that the Judge had unduly gone beyond the parameters of the reasons in the RFRL by in substance determining that the Appellant had acquired a false identity. This submission is problematic and ultimately without merit. Fundamentally, it is to be noted that the Appellant does not deny the use of an alias – which he mentions even in the course of his application – and to that extent he is hardly prejudiced by the Judge’s exploration of the circumstances of his use of an alias. Whilst the RFRL is not overt in making reference to the use of different identities, it is overt in making reference to the discrepancy between the HMRC document and the Appellant’s other documents: to that extent exploration of the Appellant’s own case – that he worked under different identities with different national insurance numbers – was an intrinsic part of a consideration of the issues in the appeal, requiring findings by the Judge. In any event, as Mr Jesurum eventually acknowledged, such a line of challenge formed no part of the grounds in support of the application for permission to appeal or the grant of permission to appeal.
36. In any event it is to be noted that the Judge’s ultimate finding was that the Appellant whilst seeking to rely upon an employment history in the identity of Geoffrey Ernest Smith had not been able to establish that he was himself responsible for the employment record that existed in that name; in other words, that the Appellant had failed to show that he was the person who had undertaken the various employments shown in the HMRC record in that identity.
37. Mr Jesurum sought to pursue a further submission in respect of a matter not seemingly argued before the First-tier Tribunal and plainly not raised in the grounds to the Upper Tribunal. My attention was directed to an extract in the Respondent’s ‘GCID - Case Record Sheet’, obtained further to a Subject Access Request (see pages 122-160 of the Appellant’s bundle before the First-tier Tribunal). The extract is a minute from in or about March 2017 resulting in the action of writing to the Appellant for further information: as part of the minute there is a discussion as to gaps in the Appellant’s evidence submitted to date; amongst other things the following is written – *“There is insufficient documentary evidence for 2010-2012, however the apps passports cover this period and there is no evidence of leaving or re-entering the UK”*.
38. The personal details pages of the Appellant’s passports have been reproduced in the Respondent’s bundle: the first shows issue on 24 July 2009 in London, valid until 23 July 2014 (B2); the second shows issue on 31 March 2015 in London, valid until 30 March 2020 (B1).

39. The Judge made findings at paragraph 16 to the effect that the apparent lack of use of these passports did not reliably indicate that the Appellant had not left the UK and re-entered, given in particular that he had acknowledged the use of aliases whilst in the UK. This particular finding was not the subject of challenge in the grounds of appeal; nor was there any reference to the GCID - Case Record Sheet that Mr Jesurum now sought to raise. There was no application to amend the grounds of challenge. In all the circumstances I declined to permit Mr Jesurum to develop a yet further point not duly pleaded.

40. For the reasons given I find no material error of law in the decision of Judge Graham. The decision of the First-tier Tribunal stands accordingly.

Notice of Decision

41. The decision of the First-tier Tribunal contained no material error of law and accordingly stands.

42. The Appellant's appeal remains dismissed

43. No anonymity direction is sought or made.

Signed:

Date: 16 April 2019

Deputy Upper Tribunal Judge I A Lewis