



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/06745/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
Heard on 5 February 2019

Decision & Reasons Promulgated  
On 12 February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

MR ABDELMADJID SLIMANI  
(Anonymity order not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr A Chakmakjian of Counsel

For the Respondent: Mr C Avery, Home Office Presenting Officer

**DECISION AND REASONS**

**The Appellant**

1. The Appellant is a citizen of Algeria born on 2 February 1970. He appeals against a decision of Judge of the First-tier Tribunal Cary sitting at Taylor House on 19 October 2018 in which the Judge dismissed the Appellant's appeal against a decision of the Respondent dated 2 March 2018. That decision was to refuse the Appellant's application for leave to remain on the grounds of long residence and private and family life.

## **The Appellant's Case**

2. The Appellant said he arrived clandestinely in the United Kingdom in September 1994 by hiding in a lorry. On 9 December 2014 he applied for leave to remain in the United Kingdom under the long residence provisions, but this application was refused without a right of appeal in February 2015. In November 2016 he made a human rights claim for leave to remain on the basis of his family life with his spouse, a British citizen ("the sponsor"). The Appellant had married the sponsor in an Islamic ceremony on 13 October 2013 and the couple thereafter began living together at an address in Camberwell and were still together. The Respondent did not accept that the Appellant was in a genuine and subsisting relationship with the sponsor and as a result considered he could not meet the eligibility relationship requirements of Appendix FM. In the alternative, if the relationship was genuine there were no insurmountable obstacles to the Appellant and the sponsor continuing their family life in Algeria.

## **The Decision at First Instance**

3. The Judge heard evidence from the Appellant, the sponsor and two other witnesses, the first was Mr [KA] ("Mr [K]"), a family friend who had previously been married to the sponsor. The other witness was Ms [KC] ("Ms [C]"), also a family friend who told the Judge she had first met the Appellant in 1996 when the Appellant was working in a restaurant.
4. The Judge set out his findings at [35] onwards. The Appellant's claim under paragraph 276ADE (1) (iii) of the immigration rules was that he had lived continuously in the United Kingdom for at least 20 years. The Judge analysed the supporting evidence for this proposition at [39] et seq but was not prepared to accept that the Appellant could establish on the balance of probabilities 20 years continuous residence. It was possible that the Appellant had lived in the United Kingdom since around 2008 which was when the sponsor claimed she had first seen the Appellant at a restaurant following her wedding to her first husband, the witness.
5. The 2<sup>nd</sup> argument was that there were insurmountable obstacles to the Appellant and the sponsor continuing their married life in Algeria. While the Appellant and sponsor had a genuine and subsisting relationship, the Judge found, after directing himself on the relevant case law, that the Appellant could not establish there were insurmountable obstacles pursuant to paragraph EX.1 (b) of Appendix FM. Whilst the sponsor who was born in the United Kingdom and was a British citizen might not wish to uproot herself and relocate to Algeria a significant degree of hardship or inconvenience for the couple did not amount to insurmountable obstacles. The Rules did not enable a couple to choose which country they would prefer to reside in. The Appellant had family members in Algeria who could assist the sponsor to manage there. She would have the support of the Appellant. There was no real evidence the Appellant would not be able to find employment on return.
6. At [49] the Judge considered the medical evidence of the sponsor's condition but noted that no evidence had been produced on the availability or otherwise of

appropriate medical facilities or assistance in Algeria. The sponsor was suffering from rheumatoid arthritis. The Judge had various appointment letters from Guy's Hospital and King's College Hospital but there was nothing to suggest that the sponsor would be unable to manage if she chose to accompany the Appellant to Algeria. She was taking medication but there was no evidence to say that that medication was not accessible in Algeria.

7. The Appellant's status was that he was here illegally and something very compelling was required in those circumstances to outweigh the public interest in the Appellant's removal. There was nothing to suggest that the Appellant was entitled to succeed under Article 8. Furthermore, the Appellant was unable to meet the minimum income requirement under Appendix FM of £18,600 and to demonstrate this the Judge set out the various state benefits received by the sponsor. Were the Appellant to return to Algeria to apply for entry clearance his application would be unsuccessful. The Appellant's immigration history did him no credit and he produced no formal language qualifications. The family were not economically self-sufficient, and the Judge dismissed the appeal on Article 8 grounds.

### **The Onward Appeal**

8. The Appellant appealed against this decision in grounds settled by counsel who had appeared at first instance and who appeared before me. The grounds took three main points. The first was that the Judge had failed to give proper consideration to the evidence of Mr [K] who said that he was aware that the Appellant was working in an Italian restaurant and this was potential corroboration of the Appellant's work history and therefore length of residence. It also added weight to the evidence of the Appellant and Ms [C] regarding the Appellant's employment in an Italian restaurant. The Judge was obliged to consider and give due weight to Mr [K]'s account as well as consider how Mr [K]'s credibility affected the weight to be given to the evidence of the other witnesses.
9. The 2<sup>nd</sup> ground was that there was an irrational approach to the evidence of Ms [C]. The Judge concluded that little reliance could be placed on Ms [C]'s evidence finding it incredible that she would be able to remember the Appellant 10 years after last meeting him and because she was able to describe what the Appellant was wearing the last time they had met in 2005. This failed to take account of the number of times Ms [C] had stated she had previously met the Appellant. She had met him 4 or 5 times a year between 1996 and 2000 totalling about 20 to 25 meetings. There was nothing inherently incredible about recalling someone's face after seeing them so many times. The description of the Appellant's clothing by Ms [C] appeared to describe clothing that was entirely normal for someone working in a restaurant. She had acknowledged that the Appellant may have been wearing dark blue trousers, rather than black.
10. The 3<sup>rd</sup> ground was that the Judge failed to take into account material Article 8 considerations. This was a reference to the Judge's treatment of the sponsor's medical condition. The sponsor needed a wheelchair, could not stand long enough to cook,

dressing was difficult for her and she needed help to wash her hair. She was unable to speak Arabic or Berber. She was entitled to employment support allowance demonstrating that she had an illness or disability affecting her ability to work. She had an entitlement to Personal Independence Payments. Her health problems could not be surmounted in Algeria even if appropriate medication was available. She was dependent on the Appellant for day-to-day support. She could only leave the property when taken by wheelchair.

11. She would be completely isolated if she had to reside in Algeria with no realistic prospect of being able to integrate into Algerian society. It was unclear why the Judge presumed that the Appellant's family members would be able to support the sponsor. The Appellant's father was in his 90s and his mother was over 75. His sisters were married with their own families whilst his brothers and their families were having to live in the parents' two-bedroom property. The sponsor's daughter had four children aged between 15 months and 18 years old who all lived in a three-bedroom property.
12. The application for permission to appeal came on the papers before Judge of the First-tier Tribunal Hollingworth on 5 December 2018. In granting permission to appeal (on the long residence point only) he wrote that it was arguable that the Judge had set out insufficient analysis of the acceptance or otherwise of the evidence of Mr [K]. It was arguable that further elucidation of the weight or otherwise to be attached to that evidence was required given the relevance or potential relevance to the length of time which the Appellant had spent in the United Kingdom.

### **The Hearing Before Me**

13. At the hearing before me counsel relied on his grounds of appeal. The Judge had acknowledged that Mr [K] had given relevant evidence but had failed to apply it. He had disregarded Mr [K]'s evidence in one sentence that Mr [K] had only arrived in United Kingdom "around mid-1999". If Mr [K]'s evidence was found to be credible that would have a knock-on effect on the weight to be given to the other evidence in the case.
14. The 2<sup>nd</sup> ground was that the Judge had rejected Ms [C]'s evidence on plausibility grounds when the issue was her credibility. It was irrational for the Judge to suggest that Ms [C]'s recollection was incredible. The 3<sup>rd</sup> ground was the challenge to the Judge's findings that there were no insurmountable obstacles to family life being continued in Algeria. The Judge had failed to take into account the practical difficulties if the sponsor were forced to relocate. There was a failure to consider how the couple could support themselves in Algeria in circumstances where the sponsor had no experience of life in that country.
15. In reply the Presenting Officer stated that the determination was sound and there was no evidence that the Judge had failed to take into account the evidence of Mr [K], the Judge was balancing the evidence in total. The Judge had approached the issue of long residence in a detailed way. There were some anomalies in the evidence which the Judge pointed out. It was a high threshold to cross to say that the Judge's

treatment of Ms [C]'s evidence was irrational. That argument could not be made out in this case. This ground was really a just a disagreement with the Judge's findings on that witness' evidence. The Judge had adequately explained why he did not find her evidence credible. There were detailed reasons in the determination showing how he had arrived at the conclusion that the Appellant could not show long residence.

16. The determination had dealt with insurmountable obstacles (the 3<sup>rd</sup> ground) in a very thorough way including the sponsor's medical issues. The sponsor would have the support of the Appellant upon return to Algeria but that did not mean that the Appellant would be unable to find work. The evidence was not that the sponsor required round-the-clock care, she was mobile in the house on crutches. The Appellant's evidence was that he had family members in Algeria and it was reasonable to expect a degree of support from them particularly given the fact that one was not talking about day-to-day care.
17. In conclusion counsel accepted that the Judge's failure to elaborate on Mr [K]'s evidence did not necessarily mean that the Judge had not taken it into account, but the problem was one did not know whether the Judge had or had not. The rationality challenge was not to the adverse credibility findings, but it was because the Judge had drifted from credibility to plausibility. To analyse the difficulties which the sponsor would face in Algeria required more than just an acknowledgement of the medical evidence, the Judge needed to consider its relevance. It was plain there was a significant level of dependency by the sponsor on the Appellant. The Appellant's family were unable to offer practical support to the sponsor. In the event a material error of law was found in the determination the rehearing should be remitted to the First-tier.

### **Findings**

18. The challenge to the Judge's decision in this case is essentially a reasons-based challenge. The Appellant sought to put forward to the Tribunal that he had lived in the United Kingdom continuously since 1994. To this end he relied on two witnesses. The first was Mr [K] but his evidence was undermined by the fact that he himself had arrived in the United Kingdom some years later and could not therefore positively confirm that the Appellant was in the United Kingdom at the time the Appellant claimed.
19. The 2<sup>nd</sup> witness relied upon was Ms [C], but the Judge found her evidence to lack weight because of the difficulty of identifying the Appellant when she had seen him so long ago. The Appellant's argument is that she would have been familiar with the Appellant because she would have seen him several times. That was a matter for the Judge to consider. I remind myself that the Judge had the benefit of seeing the witnesses give evidence and be cross-examined. The Judge gave his reasons why he did not accept the evidence that was put to him and the grounds of appeal in relation to the treatment of those two witnesses is a mere disagreement with adverse conclusions. The Judge rejected Ms [C]'s evidence on the basis that her claim to

remember the Appellant with a high degree of precision was neither plausible nor credible. The argument put forward in the grounds of appeal that the Judge moved from one to the other makes a distinction which does not fairly reflect the fact finding exercise the Judge was conducting. The test of irrationality presents a high threshold to cross and the careful and detailed consideration by the Judge of the evidence in this case means that the Appellant is nowhere near crossing that threshold.

20. Judge Hollingworth in granting permission to appeal indicated that some further consideration of Mr [K]'s evidence could or should have been made by the Judge but given the basic problem with Mr [K]'s evidence that he was not in the United Kingdom at the relevant time it is difficult to see how much further his evidence could have taken the case. The argument that if the Judge had placed more weight on Mr [K]'s evidence it might have strengthened the other evidence in the case is something of a circular argument. The problem is that Mr [K]'s evidence did not reach the stage where significant weight could be given to it. If Mr [K] had been able to demonstrate that the Appellant arrived in the United Kingdom in 1994 and/or was living in the United Kingdom from 1994 onwards the argument might have been different but that was not the case here.
21. Judge Hollingworth did not grant permission to appeal in relation to the Article 8 claim but for the sake of completeness and as I have heard argument on the point I will deal with it in this decision. The sponsor had certain medical issues, but the Judge did not overlook them. He carefully considered such matters and weighed up whether it would be unduly harsh for the sponsor to have to relocate to Algeria with the Appellant. The Judge considered the fact that the Appellant would be able to assist the sponsor in relocation and that the parties did not in any event have a right to choose where to exercise their family life together. If the Appellant wished to demonstrate that there were inadequate medical facilities available for the sponsor in Algeria, he needed to provide some evidence of that, but the Judge was clear in saying that no such evidence had been presented.
22. Similarly, the Appellant is unable to make the argument that he could not assist the sponsor in adapting to life in Algeria. The Appellant has family members in Algeria and even if the Appellant does not wish to live with his brothers, it is difficult to see why they would not be prepared to help the Appellant upon return. There does not appear to have been any substantial evidence from the brothers indicating that they would not or could not assist in relocation. The Appellant would be able to work in Algeria and this income would assist in the relocation.
23. The Appellant could not bring himself within the immigration rules because he could not demonstrate continuous residence of more than 20 years. His claim outside the immigration rules under Article 8 was dismissed by the Judge because whilst there would be some inconvenience in relocating it did not pass the test of being unduly harsh. The Judge found for the cogent reasons he gave that there were no very significant obstacles to the Appellant's relocation to Algeria and the reluctance of the sponsor to go was not of itself a decisive factor. For this see paragraph 73 of the decision in Agyarko [2017] UKSC 11 upholding the Upper Tribunal and Court of

Appeal's dismissal in a case where a United Kingdom-based sponsor had indicated their reluctance to relocate in the event that the Appellant in that case was removed.

24. The question was how a fair balance should be struck between the competing public and individual interests involved, applying a proportionality test. This the Judge correctly struck, and I have summarised some of the relevant points which went into the proportionality exercise at [7] above. Both in relation to the claim of long residence and the claim under Article 8 the grounds of onward appeal and the Appellant's submissions made to me amount to no more than a disagreement with the decision of the First-tier Tribunal. In the circumstances I do not consider that there was any material error of law in the decision of the First-tier Tribunal and I dismiss the Appellant's appeal against that decision.

**Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal

Appellant's appeal dismissed

I make no anonymity order as there is no public policy reason for so doing.

Signed this 11 February 2019

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Judge Woodcraft  
Deputy Upper Tribunal Judge

**TO THE RESPONDENT**  
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed this 11 February 2019

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Judge Woodcraft  
Deputy Upper Tribunal Judge