



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/15346/2018**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice Centre
On 8 November 2019** **Decision & Promulgated
On 23 December 2019** **Reasons**

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

MR LOUIS MARSDEN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Mall, Counsel instructed by Kalsi Solicitors
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appeal of the Appellant against the decision of Judge of the First-tier Tribunal Parkes dated 20 June 2019 in which the judge dismissed the Appellant's appeal against the Respondent's decision of 9 July 2018 refusing the Appellant's human rights claim.
2. The Appellant is a national of Jamaica and entered the United Kingdom on 19 June 1996 in what he says is his true identity with entry clearance as a visitor. He appears then to have been administratively removed from the United Kingdom but returned back a short time later, he says still in 1996,

in a different identity. He has remained unlawfully in the United Kingdom ever since, on his case.

3. An application for leave to remain was made on 5 April 2017 seeking leave to remain on the basis of his private life. The Appellant relied in particular on the provisions in paragraph 276ADE(1)(iii) and argued that he had been continuously present in the United Kingdom for twenty years. He also sought to rely upon a family life that he had developed with his partner, a Ms Cardy, and three children, one with Ms Cardy, a son born on 21 June 1998, and two other children by a different partner although by the time of the appeal the Appellant had been unable to gather any evidence that he had any relationship with those children other than his own assertion that he contacted them via WhatsApp.
4. The Respondent considered that application and refused it in fairly short terms in relation to the alleged 20 year residence issue by saying that:

“You have claimed to have lived in the UK for 20 years however you have failed to provide evidence of continuous residence throughout the period 1996 until 2016 in particular from 1996 until 2009. Therefore it is not accepted that you have lived continuously in the UK for at least 20 years”.

The respondent also considered the other elements of the Appellant’s claimed private and family life and rejected his application.

5. The Appellant appealed, the appeal coming before the judge on 5 June 2019. The judge heard evidence from the Appellant, from Ms Cardy and from the Appellant’s adult son. The judge did not accept the Appellant’s account that the Appellant had been present in the United Kingdom since 1996 and gave a number of reasons for so finding. These are, in summary, as follows:
 - (1) that the Appellant had used false identities reducing his credibility (20);
 - (2) that he had been less than frank even with the various solicitors who he had engaged from time to time to assist him with his immigration matters (21);
 - (3) that his claim to have cohabited with Ms Cardy since 2005 was not supported by the evidence of his son who recalled that the Appellant had resided in that household since the son had been aged 3 or 4 which would have been from 2001 or 2002 (reading paragraphs 18 and 27 together);
 - (4) various letters of support provided from friends were of little assistance in establishing continuity of residence in the United Kingdom (paragraphs 29 to 30);

- (5) the only reliable evidence of the date of the Appellant's entry to the United Kingdom in the false identity of Dean Cooper was itself a false document (32);
- (6) although it was accepted that the Appellant was the father of his son Travis, which was established by DNA evidence, the date of registration of Travis' birth, being 14 December 2011, was unexplained; it was difficult to see how this could be a first registration; the document did not support the Appellant's claim to be present in the UK in June 1998 (34);
- (7) it was also unexplained why on that birth certificate different addresses were given for the Appellant and for Ms Cardy (35);
- (8) there was no evidence from anyone with whom the Appellant had worked over the years.

6. The judge concluded his decision as follows:

"37. The evidence that has been provided is inconsistent, unreliable and has significant gaps that are unexplained. There is a complete absence of any supporting documentation in the form of photographs even with the Appellant in the background, wage slips, bank statements or support from employees or employers. Given that the Appellant's willingness to mislead his legal advisors and ability to obtain and use false identities I am not satisfied that the Appellant's claim to have been in the UK since December 1996 is remotely reliable. There is no fixed date since when it can be said that the Appellant has remained in the UK with there being further gaps since 2011. For the reasons given I find that the Appellant has not shown that he has any period of continuous residence in the UK and does not meet the Immigration Rules with regard to long residence".

7. The judge also briefly considered the Appellant's ability to reintegrate into Jamaica and his remaining Article 8 issues at paragraphs 38 to 41. The judge dismissed the appeal.
8. Although the Appellant was at the time of that appeal represented, he made an application for permission to appeal in person and without assistance on 10 July 2019. With respect to the Appellant there is nothing within the terms of his handwritten application which arguably raises an error of law. However, that application was considered by Judge of the First-tier Tribunal E M Simpson who granted permission to appeal on 5 August 2019. She did so directing herself that it is appropriate to consider a decision of the Tribunal in detail for an unrepresented applicant for permission to appeal and she thought that permission should be granted on the grounds that the judge had focused his attention on the lack of documentary evidence in support of the application and appeal "arguably absent of real cognisance of the frequently endemic predicament of those

such as the Appellant without status and thereby oral evidence of the Appellant and his witnesses appearing to have formed the central plank of the appeal". Permission was also granted on the basis that it was arguable that the judge had been unclear in credibility findings or inconsistent in respect of three material witnesses being the Appellant, his partner and their son Travis, more particularly the last two witnesses and where addressing those witnesses' evidence specifically, 'arguably concerns arose that findings made were ... not ... reasonably open to an objective judicial decision maker on the evidence'. That is a sufficient summary of the grant of permission to appeal for the purposes of my decision.

9. The Appellant has now instructed representatives again and I have heard submissions from Ms Mall in support of the Appellant's appeal. She relies upon the grant of permission to appeal by Judge Simpson.
10. I also raised with both parties myself a concern that I had when reading the judge's decision, applying my mind in the same way that Judge Simpson did, being conscious not to permit any Robinson obvious error of law to go unaddressed. My concern was that given the potential significance of the witness evidence of Ms Cardy, and the Appellant's reliance upon the birth certificate demonstrating the Appellant was registered as the father of Travis, that paragraphs 34 and 35 of the judge's decision appeared to include concerns that were raised by the judge only in the decision, rather than having been put to the witnesses in the hearing. I have had regard to the judge's Record of Proceedings and I cannot myself find any question being put to the Appellant or to Ms Cardy by any party or the judge to explain these matters relating to the birth certificate.
11. Mr Mills defended the judge's decision, summarising the points raised by the judge, and arguing that there were ample reasons given by the judge for finding the Appellant incredible. Mr Mills was candid in accepting that he was unable to identify a specific finding within the judge's decision in which the credibility of Ms Cardy was specifically addressed. Nonetheless, he argued that if a lack of finding on that witness's credibility was an error of law, it was not a material error of law.

Discussion

12. I find with respect to the judge's otherwise detailed and careful decision that there are material errors of law. One error is the matter raised by Judge Simpson, that there did not appear to be a clear finding made on the evidence of either Travis or Ms Cardy, both of whom had asserted that the Appellant had been continuously present in the United Kingdom, Ms Cardy's evidence clearly being the more relevant of the two. She had stated that the Appellant had been continuously present since the birth of Travis. There is no discrete finding by the judge rejecting Ms Cardy's evidence in that regard. Further, Ms Cardy does not appear to have been asked about the information within the birth certificate which caused the

judge concern. These two matters together cause me to find that there is a material error of law in the judge's decision. For that reason I find that the judge's decision overall is not sustainable and I set it aside.

13. On a question of relief, due to the extent of the findings of fact which will need to be re-made in this appeal I direct that the appeal be remitted to the First-tier Tribunal.

Decision

The decision involved the making of a material error of law.

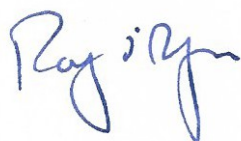
I set the decision aside.

I remit the appeal to the First -tier Tribunal

No anonymity direction is made.

Signed

Date 17.12.19

A handwritten signature in blue ink, appearing to read 'Ray O'Ryan', written in a cursive style.

Deputy Upper Tribunal Judge O'Ryan