IAC-AH-SAR-V1

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/11266/2019**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 2nd November 2020	**On 19th November 2020**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

ABDOULAYE DOSSO
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms F Shaw, instructed by Kamberley Solicitors
For the Respondent: Mr T Melvin, Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in the bundles on the court file, the contents of which I have recorded. The order made is described at the end of these reasons.

DECISION AND REASONS

1. The Appellant is a national of the Ivory Coast born on 7 June 1975. He appeals against the decision of First-tier Tribunal Judge Young,

promulgated on 6 November 2019, dismissing his appeal against the refusal of leave to remain on human rights grounds.

2. The following factual matters are accepted. The Appellant entered the UK using a false identity card on 30 November 1999. The Appellant claimed asylum in the name of Mussenge Massamba Eric born on 12 December 1980 in the Democratic Republic of Congo [DRC]. His asylum claim in that identity was refused. He thereafter married a French lady named Jessica and, using the name Dosso, he made an application for a residence card. This was refused on the basis that the marriage was one of convenience and his appeal was dismissed in August 2010.

3. The Appellant gave evidence at the appeal before First-tier Tribunal Judge Young that he had not made a claim for asylum in the name of Abdoulaye Dosso on the basis that he would be at risk of persecution on return to the DRC because he was gay. The judge rejected his claim that he would be at risk because of his sexuality and found that his account could not be relied on because he had used two different identities to pursue different applications in the UK. There was no challenge in the grounds of appeal to the judge's findings at [51] to [59].

4. Permission to appeal was sought on the ground that the judge failed to take into account that the Appellant first claimed asylum when he entered the UK in December 1999 and therefore he had sufficiently demonstrated his presence since that date. It was submitted that the Appellant would have spent twenty years in the UK within a month of the hearing. Permission was granted by Upper Tribunal Judge Jackson on the following grounds:

> "The First-tier Tribunal accepted that the Appellant who appeared before it was the same individual who entered the United Kingdom on 3 November 1999 (paragraph 55) and by the date on which the decision was written (3 November 2019) and promulgated (6 November 2019), the Appellant had on this finding been in the United Kingdom for twenty years. Although not at the date of application, in substance, it is arguable that he met the requirement in paragraph 276ADE(1)(iii) of the Immigration Rules of long residence such that his appeal on human rights grounds should be allowed for that reason alone.
>
> The other grounds of appeal are unlikely to be material in light of the above, particularly as they go to the issue of whether the Appellant would face very significant obstacles to reintegration either in the DRC or in the Ivory Coast and as it does not appear that the Appellant has claimed asylum or pursued his appeal on grounds of sexuality. However, I do not restrict the grant of permission to exclude these grounds."

5. Judge Jackson gave directions for further submissions including whether the error of law decision could be made on the papers. In response to those directions, the Appellant made further submissions dated 17 July 2020 which were relied on by Ms Shaw. It was submitted the Appellant satisfied the Immigration Rules. In the alternative, the judge made an error

of law in the Article 8 exercise outside the Immigration Rules in focusing on the absence of evidence of extended family ties and the quality of such relationships which were not required given the Appellant's 20 years' residence in the UK. The matters relied on by the judge were irrelevant to whether a person has a private life. It was submitted that private life is a broad concept incapable of exhaustive definition. The judge ignored aspects of the Appellant's private life such as working in the UK and his lengthy residence. Further, the judge failed to apply the criteria in Razgar. It was submitted, if an error of law was found, the appeal should be remitted to the First-tier Tribunal.

Oral submissions

6. Ms Shaw submitted it was accepted the Appellant arrived in the UK on 30 November 1999. The judge's reference at [55] of the decision to 3 November 1999 was obviously an error. She submitted the judge should have had in mind the Appellant's length of residence in carrying out an Article 8 assessment and the judge had not done so. This was not a new matter because it was considered at paragraphs 12 to 17 of the refusal letter. There was substantial evidence of long residence before the Respondent. The decision of the First-tier Tribunal was written on 3 November 2019 which is the same day of the month given for the Appellant's entry to the UK in 1999, therefore the judge should have had in mind the lengthy residence. There was a material error of law and the matter should be remitted to the First-tier Tribunal.

7. Mr Melvin submitted a copy of the Appellant's CID record which showed he arrived in the UK at 22.44 on 30 November 1999. He relied on his Rule 24 response dated 30 October 2020 in which he submitted the judge's decision was based on the evidence before him at the date of hearing, 30 September 2019, some four to five weeks before the Appellant would have completed 20 years' residence in the UK. The Appellant could not meet the requirements of the Immigration Rules. The refusal notice did not accept there was any evidence prior to 2003. The application form which the Appellant completed stated he entered on 1 December 1999. There was no material error of law in failing to give weight to the finding that the Appellant arrived on 3 November 1999.

8. Mr Melvin submitted it was clear from the judge's findings that the Appellant was totally without credibility and had sought to deceive the Respondent and Tribunal at various stages of his stay here. The judge's findings were sustainable and there was no error of law. Should an error of law be found this would be a new matter and the Respondent refused consent for it to be heard before the Upper Tribunal. The matter should be remitted to the First-tier Tribunal. The Appellant should provide evidence to show how he can meet the continuous residence test.

9. Mr Melvin submitted the Appellant had not met the requirements of the Immigration Rules at the date of application or the date of hearing. The judge had struggled with the evidence of the Appellant's double identity

and lack of credibility. There was a lack of evidence of family life. The judge was entitled on the facts to reach the conclusions he did. The Appellant could not meet the Immigration Rules and there was nothing outside the Immigration Rules to warrant a grant of leave. There was no evidence outside the numerous applications to show 20 years' continuous residence.

10. In response to questions from me, Ms Shaw confirmed that there was no challenge to the judge's findings at [51] to [59]. I confirmed that at [60] the judge stated: "In any event, as is pointed out in the letter of refusal, the Appellant would fall foul of the suitability requirements in S-LTR.2.2 and 4.2 of Appendix FM given the use of false/assumed names and the marriage being found to be a sham." Ms Shaw did not seek to challenge that finding and relied on the submissions of 17 July 2020.

11. Ms Shaw submitted there had been inadequate consideration of the lengthy period of residence in the UK in the judge's Article 8 assessment. The Appellant had sought to put evidence of his relationship with his siblings before the judge but a request for an adjournment to allow witnesses to attend had been refused. I noted that it was not apparent from the decision that an adjournment request had been made at the hearing and there was no challenge to the First-tier Tribunal decision on that basis. It was not argued in the grounds. Notwithstanding, Ms Shaw submitted there was an inadequate Article 8 assessment given the Appellant's lengthy residence and the substantial evidence of employment in the UK. She accepted that paragraph 276ADE(1)(iii) was not met.

Conclusion and Reasons

12. The judge made the following findings at [61] to [63]:

> "61. For the matter to be considered outside the Immigration Rules there would require to be substantial and weighty reasons. It is said in this case that the weighty reasons would be the length of time that the Appellant has been in the country and the private life which he will have established. No evidence was given from the Appellant's siblings. No statements were available. I could not consider that he had established a family life with his siblings beyond normal emotional ties. So far as private life is concerned, I have no information about his brothers and sisters and what they do, how often he sees them, whether they are leading independent lives quite separate from him.
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> 62. I have no doubt that he will have other acquaintances but there is a paucity of information as to the private life of the Appellant. In any event in any application under Article 8, section 117B of the 2002 Act requires to be taken into account. In that respect it is stated that little weight is to be given to private life established when an individual's immigration status is precarious. That is the case here.
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> 63. So far as the length of time in the country is concerned that is substantial. However, Article 8 is not a measure that can be used

> as an excuse for a 'near miss' to comply with the Rules. Given the lack of information about private life I consider that despite the length of time that the Appellant has been in the country the appeal should not be allowed".

13. It is accepted, on the evidence before the First-tier Tribunal, the Appellant could not satisfy the Immigration Rules. It is apparent from reading [61] to [63] that the judge took into account the Appellant's length of residence, which he described as substantial, in his assessment of Article 8 outside the Rules. The argument that he has failed to attach sufficient weight to this aspect is not made out.

14. On the facts of this case, the Appellant cannot satisfy the Immigration Rules. It is accepted he does not satisfy paragraph 276ADE(1)(iii). It has never been suggested that there are any insurmountable obstacles to return to the Ivory Coast and there was no challenge to the judge's findings in respect of the Appellant's proposed country of return. Given that the Appellant cannot satisfy the Immigration Rules substantial weight is attached to the public interest, which the judge recognised in his balancing exercise. The judge found there was very little evidence of the Appellant's private life before him. In any event, given the application of section 117B, little weight should be attached to that private life because the Appellant has remained in the UK illegally for many years.

15. The failure to set out the five step approach in Razgar was not material. The judge accepted the Appellant had a private life and accepted his lengthy residence. On the evidence before the judge, steps 1 to 4 of Razgar, are satisfied. The judge considered all relevant matters in the proportionality assessment.

16. I find there was no error of law in the judge's assessment of proportionality. At the date of the application and at the date of hearing, the Appellant did not have 20 years' residence. The grant of permission was made on the basis the Appellant arrived in the UK on 3 November 1999. It is accepted the Appellant arrived on 30 November 1999. Therefore, the Appellant did not have 20 years' residence in the UK at the time the decision was made or promulgated.

17. At the date of this hearing before me, the Appellant has 20 years' residence in the UK. It is open to the Appellant to make an application to the Respondent submitting sufficient evidence to show that residence has been continuous.

18. Accordingly, I find there is no error of law in the judge's decision, promulgated on 6 November 2019, dismissing the appeal on human rights grounds. I dismiss the Appellant's appeal to the Upper Tribunal.

Notice of decision

Appeal dismissed

J Frances

Signed Date: 16 November 2020
Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

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

J Frances

Signed Date: 16 November 2020
Upper Tribunal Judge Frances

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent.

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email