



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/17697/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 12 March 2020**

**Decision & Reasons
Promulgated
On 19 March 2020**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

LAIFA OMAR

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Lam, instructed by David Tang & Co

For the Respondent: Ms A Fijiwala, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Algeria, born on 1 November 1974. He has been given permission to appeal against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his application for leave to remain in the UK.

2. The appellant claims to have entered the UK unlawfully in the summer 1994. He claims to have assumed the identity of Jamel Hammeri, or Djamel Hammeri, a French national, shortly after his arrival in the UK. He was convicted on two occasions, on 11 April 2007 and 26 January 2011, of possessing a false/

improperly obtained ID document, for which he received a six month prison sentence on the first occasion and a six week sentence on the second occasion. On 25 January 2011 he was served with removal papers as an illegal entrant.

3. On 1 March 2016 the appellant applied for leave to remain in the UK on private life grounds, on the basis of his long residence in the UK of over 20 years. His application was supported by national insurance records dating back to 1994 and HMRC documents in the name of Jamel Hammeri, as well as statements from his brothers and various friends attesting to his entry to the UK in 1994 and his use of that alias.

4. The appellant's application was refused by the respondent on 8 July 2016. The respondent considered that the appellant could not meet the long residence requirements in paragraph 276B as it was undesirable for him to be given leave to remain owing to his failure to declare his convictions and his use of multiple aliases and, furthermore, he had not been residing lawfully in the UK. The respondent considered that the suitability provisions in S-LTR.1.6 and S-LTR.2.2(b) of Appendix FM applied as, with regard to the former, the appellant's presence in the UK was not conducive to the public good because he had used multiple aliases during his time in the UK and, with regard to the latter, he had failed to disclose his convictions. As a result, the appellant could not meet the requirements of paragraph 276ADE(1)(i) of the immigration rules. The respondent considered further that the appellant could not meet the requirements of paragraph 276ADE(1)(iii) as he had failed to provide evidence to show that he had resided in the UK for at least 20 years, since he had not provided any official identity document issued to him to show he was ever legally known by the name of Jamel Hammeri. The respondent considered that there were no very significant obstacles to integration in Algeria for the purposes of paragraph 276ADE(1)(iii) and no compelling circumstances justifying a grant of leave outside the immigration rules.

5. The appellant's appeal against that decision was initially heard by First tier Tribunal Judge Sweet on 16 November 2017 and was allowed in a decision promulgated on 28 November 2017. However, following the grant of permission to the Secretary of State to appeal that decision, the matter came before the Upper Tribunal on 13 March 2018. Notably, at that hearing the respondent acknowledged that the appellant's convictions had, by that time, become spent. Deputy Upper Tribunal Judge Lewis found that Judge Sweet had failed to give proper reasons for his conclusions on the appellant's length of residence in the UK and had failed to consider the suitability provisions in S-LTR.1.6. He set aside Judge Sweet's decision and remitted the case to the First-tier Tribunal to be re-decided de novo.

6. The appeal then came before First-tier Tribunal Judge Oliver on 30 May 2019. The judge noted the evidence relied upon by the appellant in his application to the respondent, and the further evidence consisting of letters from his accountant and medical documents, all in support of his claimed length of residence in the UK in the assumed name of Jamel Hammeri. The judge also noted the appellant's explanation that his conviction in April 2007

resulted from his attempt to open a bank account with someone else's ID and that his conviction in 2011 followed a raid on his home by immigration officers who found an ID which did not belong to him. He had not told his solicitors about the convictions as he feared that they would not take on his case. The false identity had not been stolen but had been given to him by a friend in 1994. The judge heard from the appellant's brother Mourad and from his friend. The judge noted that the appellant's claim as to long residence rested on the proposition that he had adopted the alias of Jamel Hammeri, on whose name all the relevant evidence was based. He did not accept the evidence from the appellant's accountants was reliable and noted that the accountancy firm, TT Accountancy services, was incorporated on 16 December 2016, two years after the appellant and his witness maintained that he had stopped working and that there was no explanation why he had needed their services. The judge did not find that the evidence advanced by the appellant for claiming to be the person referred to in his documents, Jamel Hammeri, established that fact and considered that he had therefore failed to show 20 years residence under paragraph 276ADE(1)(iii). Neither did he find that there were very significant obstacles to the appellant's integration for the purposes of paragraph 276ADE(1)(vi). The judge considered that the most the evidence showed was that the appellant had been in the UK at the date of his first conviction in 2007. He found there to be no compelling reason why his claim should be considered outside the immigration rules and he found that his removal would not be disproportionate. He accordingly dismissed the appeal.

7. The appellant sought permission to appeal to the Upper Tribunal on the following grounds: that the judge had made a procedural or other irregularity by drawing adverse conclusions from the accountants, TT Accountancy Services, being incorporated two years after he maintained that he had stopped working, when that had never been an issue in the refusal letter or at the hearing, so giving rise to procedural unfairness; that the judge had failed to give adequate reasons for finding that both witnesses were unreliable; and that the judge's finding, when considering paragraph 276ADE(1)(vi), that he had come to the UK in 1994, contradicted his findings on paragraph 276ADE(1)(iii).

8. Permission was refused by the First-tier Tribunal, but was subsequently granted on a renewed application to the Upper Tribunal on all grounds.

Appeal Hearing

9. At the hearing both parties made submissions.

10. Mr Lam expanded upon the three grounds of appeal accompanying the application made to the First-tier Tribunal, as well as the further grounds made to the Upper Tribunal. With regard to the first ground, he submitted that there was nothing abnormal in the accountant's letter of 27 October 2015, at page 201 of the appeal bundle. The appellant had approached his accountants following receipt of the letter at page 200 from HMRC dated October 2015 telling him to complete tax returns for work undertaken in the tax year ending April 2015, which was not inconsistent with him having ceased working in

2014. The fact that the accountancy firm was incorporated in 2016 was irrelevant. The accountants' letter was written in 2015 before the appellant made his application for indefinite leave to remain, which showed that he was using his alias before he made his application. As for the second ground, Mr Lam submitted that the judge had accepted that the witnesses did not use deception and the only reason given for finding them to be unreliable was the fact that they considered the appellant to be trustworthy, which was insufficient, particularly in light of the findings in ZH (Bangladesh) v Secretary of State for the Home Department [2009] EWCA Civ 8. With regard to the third ground, the judge had found at [23] that the appellant came to the UK in 1994 and therefore his findings on paragraph 276ADE(1)(iii) were contradictory. Mr Lam also relied upon the point raised in the renewed grounds, that the judge had erred by making adverse findings from the absence of evidence from the appellant's past landlords and employers, when such people could not be expected to come to court and give evidence when they risked being prosecuted for accommodating/ employing an illegal entrant. Mr Lam submitted that the fact that the appellant had been able to accumulate so much documentary evidence, and continued to receive and submit recent documentary evidence such as from the NHS, showed that he was the person named in the documents. The judge's decision ought therefore to be set aside.

11. Ms Fijiwala submitted that whilst it was correct that the matter of the year of incorporation of the accountancy firm had not been put to the appellant, there were other reasons given by the judge for finding the accountants' letters to be unreliable, as set out at [20]. The judge was entitled to find the witnesses not credible for the reasons given and taking all the evidence in the round. The judge was entitled to find that the appellant had provided no evidence of efforts to obtain evidence from landlords or employers. At [23] the judge did not make a finding that the appellant had come to the UK in 1994 but was merely referring to what he had claimed. The judge gave sufficient reasons for finding that the appellant was not the person named in the documents.

12. Mr Lam, in response, reiterated the points previously made.

Consideration and findings

13. As both parties agreed, other than the letters from TT Accountancy, there was no challenge to the reliability of the substantial number of documents submitted by the appellant in the name of Jamel Hammeri which related to that person's employment history and included salary slips and correspondence from HMRC. The relevant issue was whether the appellant was in fact the same person as named in the documents, Jamel Hammeri, since if he was, the evidence demonstrated residence in the UK since 1994.

14. It was Mr Lam's submission that the fact that the appellant had been able to produce so many documents covering a period of so many years and including recent documents such as those from the NHS in the supplementary bundle was sufficient, on a balance of probabilities, to show that he was the person referred to in those documents. It was his submission that the judge

had erred by concluding otherwise. However, it is relevant to note that the evidence before the judge, as recorded at [8], was that the identity was not stolen but had been given to the appellant by a friend and, as such, the judge was entitled to expect the appellant to show that the documents related to him personally rather than having simply been given to him by his friend.

15. Before the judge, the appellant relied on letters from his accountants as demonstrating a link between the documentary evidence and the identity of Jamel Hammeri, on the basis that the accountants, in the second letter of 22 October 2017, confirmed that the appellant's photograph was Jamel Hammeri. The appellant now asserts in his grounds that the judge did not provide proper reasons for rejecting that evidence and erred by basing his reasons upon a matter not previously raised and upon which he had no opportunity to comment, namely the fact that the accountancy firm was incorporated two years after he had ceased working. However, as Ms Fijiwala properly submitted, there were various other reasons given by the judge for according no weight to the accountants' confirmation of the appellant's assumed identity. The judge's reasons are set out at length at [20] and include the fact that the two accountants' letters are very different, that the first has letterhead but no address and provides no specific information and that the second is simply a handwritten note on differently headed notepaper, that there is no evidence of work done by the accountants for the appellant such as his accounts and that the accountants did not provide any further supporting evidence which could easily have been given. I do not find any force in Mr Lam's argument that the fact that the first letter pre-dated the appellant's application for indefinite leave to remain was reason to support the appellant's claim. For the reasons cogently given by the judge it seems to me that it was entirely open to him to accord the letters from the accountants no evidential weight and to conclude that the handwritten letter was not a reliable document.

16. As for the only other evidence produced by the appellant to support his assumed identity of Jamel Hammeri, namely the oral evidence of his brother and friend and the statements from other friends, again it seems to me that the judge was fully and properly entitled to have concerns about the reliability of that evidence. The judge's comment at [12] in relation to the two witnesses, that "neither gave any sign of guile", is not entirely clear, but in any event the judge was fully entitled to accord little or no weight to witnesses who described the appellant as honest and trustworthy when he had in fact been convicted of criminal offences of using false identities to access services. I do not agree with Mr Lam that the judgment in ZH (Bangladesh) undermines the judge's conclusions in that regard. Furthermore, and as Ms Fijiwala submitted, it is clear from the judge's reference at the end of [20] that he was of the view that the evidence of the witnesses, as "interested" parties, would carry less weight than an independent, professional witness, a view which he was fully entitled to hold.

17. As I indicated to Mr Lam, I find no merit in the reliance in the grounds upon the reference at [23] to the appellant coming to the UK in 1994 as an indication of contradictory findings by the judge. It clear that the judge was not making a

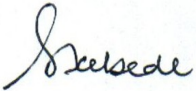
finding at that point but was merely considering the question of very significant obstacles to integration on the basis of the account given by the appellant. Neither do I find merit in the assertion that the judge erred by drawing adverse conclusions from the absence of live evidence from the appellant's past employers and landlords. I agree with Ms Fijiwala that that was not the point the judge was making. Rather, he considered it relevant that there was no evidence from the appellant to explain whether he had made efforts to seek confirmation from such people, a matter which he was entitled to take into account.

18. For all these reasons I find no merit in the appellant's challenge to the judge's decision. The judge was fully and properly entitled to accord the weight that he did to the limited evidence relied upon by the appellant to demonstrate a link between himself and the person named in the documents and to conclude that the documents in the name of Jamel Hammeri were not evidence of the appellant's residence in the UK. The judge gave proper reasons, at [25], for concluding that the appellant had demonstrated at most that he had resided in the UK since 2007 when he was first convicted. He was entitled to take account of the fact that the appellant would have been eligible to apply for long residence leave from 2008 under the previous immigration rules, had he genuinely resided in the UK since 1994, and to consider the absence of any such application as a further indication that he had not accumulated the length of residence claimed.

19. The grounds make no separate challenge to the judge's findings on paragraph 276ADE(1)(vi) and compelling circumstances outside the immigration rules. Indeed the judge was fully and properly entitled to conclude as he did in that regard. Accordingly the judge was entitled to dismiss the appeal on the basis that he did and I uphold his decision. There are no errors of law in the judge's decision.

DECISION

20. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed 
Upper Tribunal Judge Kebede

Dated: 12 March 2020