



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/06311/2013

THE IMMIGRATION ACTS

Heard at Field House
On 18 November 2013
Prepared 19 November 2013

Determination Promulgated
On 28th November 2013

Before

LORD MATTHEWS SITTING AS A JUDGE OF THE UPPER TRIBUNAL
UPPER TRIBUNAL JUDGE MCGEACHY

Between

JATINDER SINGH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss C Hulse, of Counsel, instructed by Lords Solicitors LLP
For the Respondent: Miss K Pal, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of India, born on 1 July 1980, appeals with permission against a decision of Judge of the First-tier Tribunal P-J White who, in a determination promulgated on 22 June, dismissed the appellant's appeal against a decision of the

Secretary of State made on 8 February 2013 to refuse him leave to remain under the long residence provisions of the Rules.

2. The appellant did not claim to have had ten years' lawful residence in Britain. Rather he claimed that he had lived, without permission, in Britain for fourteen years and therefore qualified under the provisions of paragraph 276B(i)(b).
3. The judge considered a number of documents produced by the appellant and heard evidence from him and various witnesses. It was the appellant's claim that he had entered Britain in March 1995 with the help of an agent and had lived here continuously since then. He claimed that he had first lived at 114 Goodmayes Road, Ilford and produced a tenancy agreement for that address, but that thereafter he had moved to an address in East Ham. He claimed that his first employment had been at an Indian restaurant in South Wales where his employer had arranged a temporary national insurance number which he had used ever since.
4. The appellant stated that he had known a Mr Avtar Singh, who has Parkinson's disease since 1998, and also a Mr Ranjit Singh Mann for over thirteen years. He also claimed to have known Mr Arjinder Singh Bagral since 1997/8 and a Mr Nalin Mukundlal Shah since 1998.
5. Counting back from the date of the decision - 8 February 2013- the relevant fourteen year period would have had to have begun before 8 February 1999.
6. In paragraphs 32 onwards of the determination the judge set out his findings of fact. The judge gave himself the appropriate self-direction regarding the difficulties which those who are in Britain illegally might have in obtaining documentary evidence particularly with regard to their employment. He then considered the first document presented to him, which was a tenancy agreement dated 1 April 1997. That document indicated the grant of a twelve month assured shorthold tenancy to the appellant and Gurpreet Singh at a rent of £150 per month. The judge did not accept that document was genuine. In paragraph 34 he set out cogent reasons for that conclusion given that the appellant was claiming that shortly after arrival as a 16 year old without work and without money it was not likely that the appellant would have been able to take on a tenancy and pay rent. He noted the agreement misspelled the appellant's name and although he discounted a submission by the Presenting Officer that the ink on the form appeared newer than the paper, he did refer to a number of misprints and grammatical and typographical errors in what was supposed to be an Oyez standard form agreement.
7. He therefore rejected the tenancy agreement as evidence of the appellant living in Britain at that time.
8. He then considered evidence which the appellant had produced regarding what he said was his first job in South Wales. The appellant had, he considered, given unreliable evidence of that employment and the judge gave reasons in paragraph 45

for rejecting the evidence of his work in South Wales, stating that the payslips appeared to show that he worked there from April 1998 until March 1999 and that the appellant's claim was that he was to be paid monthly in cash with no deductions for tax and national insurance. He noted that the payslips were for exactly the same amount in respect of how many days the appellant worked in each month. The judge did not accept that those payslips were evidence that the appellant had been in Britain at that time.

9. He considered a P60 from the appellant's claimed second employer which appeared to indicate that the appellant had been employed for seven months. However the judge noted that the appellant had stated that a job had been arranged for him for "a week or two" which the judge stated was a very different period. He considered further documentation from a number of restaurants where the appellant said that he had worked but pointed out that each appeared to have paid the appellant a flat rate either monthly or weekly but the amount paid never varied to take into account differences in the number of hours or days worked.
10. His conclusion was that, regarding the evidence of the appellant's claimed work record he could not take the view that the documents of themselves were reliable evidence of unbroken residence in Britain from 1997 onwards. He also found that the tenancy agreement was "wholly unreliable".
11. He considered the evidence received from Mr Bhogal, Mr Shah and Mr Avtar Singh and stated that he was unable to accept that their evidence of when they first met the appellant was reliable. He found the evidence of Mr Aftar Singh that he had met the appellant in 1998 at the Gurdwara in Seven Kings unreliable as the appellant had said that he had only been attending the Gurdwara in Barking and did not attend at Seven Kings until about 2001 - therefore Mr Avtar Singh could not have met him in 1998. Similarly, Mr Bhogal had said that he had met the appellant at the Gurdwara in Ilford in 1997/98 but said that that did not match the appellant's initial account. When it had been put to Mr Bhogal that the Gurdwara in Ilford had only been built in 1999 Mr Bhogal had said that they first met in Barking and that later the Barking Gurdwara had bought a building for a second temple in Goodmayes and that therefore in about 2005/6 they had met in Ilford.
12. With regard to the evidence of Mr Shah, which was that he had met the appellant in 1998 and the appellant had started working in his garden, that evidence was not accepted by the judge as at that stage the appellant had claimed that he was working in Wales five or six days a week and going to Gurdwara on Sundays where he had referred to staying until the evening. The appellant could therefore not have been working in Mr Shah's garden at that time.
13. The judge considered the evidence of Mr and Mrs Mann, accepting Mrs Mann's evidence that she had met the appellant at her wedding in 2001 and stated that therefore it was commonsense that if the appellant had been a guest at the wedding he might have become friends with the husband sometime before. He went on to say

letters from the Gurdwaras are also consistent with the appellant first becoming known to them during the period between 1999 and 2001.

14. In paragraph 53 the judge stated:

“53. In the light of that, and notwithstanding my reservations about the employment documents, I am satisfied on the balance of probabilities that the appellant first entered the United Kingdom in about 1999 or 2000. I am not satisfied that he was here earlier than that, whilst still a child. His employment and other evidence is very patchy for a long period of continuous residence. His witnesses all said that they were sure that he had not left the country since they knew him but only one of them in my judgment described the sort of relationship and regular contact which would enable such an assertion to be confidently made. That one is Mr Avtar Singh, who says the appellant has lived with him since 2003 and who would therefore know whether the appellant had left since then. I have already given my reasons for finding Mr Avtar Singh unreliable on the issue of when he first met the appellant. I further note that his evidence to me was of a close relationship with the appellant, who is almost like his son to him. None of the other witnesses, who claim the appellant is a close friend said anything about his very close relationship with Mr Singh.”

15. In paragraph 54 the judge stated:

“54. The appellant's entry was illegal, and according to his immigration status questionnaire he came for economic advantage. It might be thought that having once got in, in such a case, he would stay. On the other hand his entry was apparently with a false British passport and he has remained in close contact with his family in India. If he had the means to pass openly but undetected thorough immigration control (as opposed, say to being smuggled in in a lorry) there is no overwhelming presumption that he has only done so once

55. Accordingly, I am not satisfied either that the appellant first came here 14 years before the decision (when service of the notice of decision would have stopped time running) nor that his residence has been continuous since whenever he first arrived. He cannot therefore succeed under paragraph 276B.”

16. The judge then turned to the issue of the appellant's rights under Article 8 of the ECHR. He found that the appellant could not succeed under the Rules but went on to say that he accepted that the appellant had established private life here and then in paragraph 61 set out his findings on the issue of proportionality. He wrote:-

“61. The public interest in the maintenance of a firm and fair system of immigration control is always a matter to be given significant weight. The appellant has been here, on my findings, for roughly 13 years now, which is a significant period. On the other hands, the evidence of his private life shows it to consist of a series of intermittent jobs, some voluntary at one or more Gurdwaras, and a circle of friends. I have no reason to doubt that he could find work, engaging in voluntary service and make friends on returning to India, where in addition he would have his family. He will not have such a close contact with the friends he

has made here, but he will be able to keep in touch with them if he wishes. All of his stay has been unlawful, and therefore he has known that his position was precarious. His working has been unlawful. I accept, as ZH makes clear, that working unlawfully is not a reason to (?for) rejecting an otherwise valid claim under paragraph 276B, but that is not the same as suggesting that the irregularity of his work, as well as his stay, is irrelevant to the assessment of proportionality. I am in all the circumstances satisfied that that decision is a proportionate response. The appeal in reliance on human rights also fails.”

17. An application for leave to appeal was then submitted in which the grounds asserted that full evidence had been provided that the appellant had lived in Britain for fourteen years and that the respondent had accepted that all the documentary evidence was “original and genuine”. It was stated that the respondent had only refused to accept the documentary evidence because there was no corroborating evidence.
18. Having referred to what the judge wrote in paragraph 61 – his finding that the appellant had lived in Britain “for roughly thirteen years” – it was argued that he had failed to state on what he based that finding and therefore that he had erred in law in not giving reasons in the determination.
19. The grounds went on to question why the judge had stated that he was not satisfied that the appellant had continued to live in Britain since “whenever he first arrived” and it was alleged that that was merely an assumption. It was pointed out that it was not alleged in the refusal letter that the appellant had ever left Britain.
20. The grounds then questioned the judge’s finding that service of the notice of decision would have stopped time running, before referring to the fact that the judge had appeared to find Mr and Mrs Mann credible witnesses, pointing out that Mr Mann had stated that he had met the appellant some time in 1999. They asserted that the judge should have found that the appellant had lived in Britain for fourteen years and therefore qualified under paragraph 276.
21. Having referred to the evidence of Mr Shah it was claimed that the judge had no right to reject his evidence or indeed the evidence of Mr Avtar Singh or that from Mr Boghal.
22. With regard to the mistakes in the tenancy agreement, it was claimed that these were the fault of the landlord rather than the appellant. Other grounds stated that it was not surprising that the appellant had been lent money for his half share of the rent. The grounds also claimed that the appellant had established “a sort of family life” with Mr Avtar Singh and that therefore his removal was not proportionate.
23. Miss Hulse relied on the grounds of appeal and asserted that it had not been argued by the respondent that the appellant had travelled out of the country for a period of more than six months during the fourteen year period during which he had lived in Britain illegally. Moreover she argued that the fact that the appellant had lived in

Britain illegally should not have been a reason why the judge had concluded that the removal of the appellant would not be disproportionate.

24. She claimed that the appellant had provide detailed evidence that he had arrived in 1997 and that his evidence was supported by the witnesses emphasising that the judge appeared to have accepted the evidence of Mr Mann which indicated that he had known the appellant since 1999. Given the fact that the date when the appellant had been in Britain in 1999 was crucial, the judge should have made a clear finding thereon. She referred to the fact that the judge had stated that the appellant had lived in Britain for “roughly” thirteen years.
25. She referred to the evidence of Mr Shah and stated that that evidence was clear and that the evidence of Mr Shah was linked to a particular date – that of his son’s 20th birthday. If the judge had wished to question that it was open to him to do so.
26. With regard to the evidence from the Gurdwaras she argued that clear answers had been given to the questions about when the appellant had attended the Gurdwaras and that the reasoning was clear – there was no reason why the appellant could not have attended more than one Gurdwara. Her submission was that the conclusions of the judge were not sustainable. She therefore asked us to set aside his decision.
27. In reply Miss Pal argued that the determination was both reasoned and sustainable and there was nothing irrational about the judge’s findings. It was for the appellant to prove his case and the judge had considered the evidence before him and reached relevant conclusions thereon. He had concluded the appellant could not succeed under the Rules and furthermore his conclusions regarding proportionality of removal were fully open to him.
28. We find that there is no material error of law in the determination of the Immigration Judge. Indeed, we have concluded that the grounds of appeal are no more than a disagreement with findings which the Judge was entitled to make on the evidence before him.
29. It is clear from the determination that the judge had in mind the relevant test: that is whether or not the appellant had lived in Britain for fourteen years prior to the decision to refuse made in February 2013. The fourteen year period is referred to by the judge in paragraph 1 of the determination and again in paragraph 55, where the judge makes the clear and unequivocal statement that he was not satisfied that the appellant had come to Britain fourteen years before the decision.
30. The judge reached that conclusion after a careful analysis of the evidence. He gave clear reasons why he did not accept that the tenancy agreement could be relied on, let alone the payslips for the appellant's claimed employment at the Mouchak Restaurant in South Wales. He further gave reasons as to why he did not accept the payslips from Lee Spice, the job which the appellant left in October 2000, given that

the appellant had stated that he had had that job for “a week or two” rather than the seven months which the P60 would imply.

31. Moreover the judge dealt in considerable detail with the evidence from the Gurdwaras but the reality is that that evidence does not take the appellant back before February 1999. His reasoning for rejecting the evidence of the Gurdwaras insofar as it related to the period before February 1999 is detailed and cogent.
32. We consider that the judge also gave sustainable reasons for rejecting the evidence of Mr Shah, as he stated that it was improbable that the appellant would have been looking for or able to carry out gardening job in the summer of 1998 if the appellant was working in South Wales five or six days a week and going to the Gurdwara on Sunday.
33. It is correct that the judge accepted the evidence of Mr and Mrs Mann but the reality is that the evidence of Mr Mann was that he had met the appellant in 1999, not that he had met the appellant before February 1999.
34. While it is correct that the judge in paragraph 61 stated that he had found that the appellant had lived in Britain for “roughly thirteen years” that is clearly a different finding from a finding that the appellant had lived in Britain for fourteen years – the requirement of the Rule – and the requirement which the judge clearly had in mind for the reasons which we have set out above.
35. Miss Hulse correctly withdrew the ground of appeal which had stated that the judge had been wrong to say that the service of the notice of decision would have stopped time running. The terms of Rule 276(i)(b) are quite clear. It refers to fourteen years’ continuous residence:

“excluding any period spent in the United Kingdom following service of notice of liability to removal or notice of a decision to remove by way of directions under paragraphs 8 to 10A, or 12 to 14, Schedule 2 to the Immigration Act 1971 of Section 10 of the Immigration and Asylum Act 1999, or of a notice of intention to deport”.
36. The appellant was considered by the Secretary of State to be a person to whom removal directions may be given in accordance with paragraphs 8 to 10A of the Schedule 2 of the Immigration Act 1971 as he was an illegal entrant.
37. We therefore find that the judge was correct to find that the appellant could not qualify for leave to remain under the Rules.
38. The judge did properly consider the issue of the rights of the appellant under Article 8 of the ECHR. In paragraph 61 he set out his conclusions that the removal of the appellant would not be disproportionate. He did take into account the fact that the appellant had lived in Britain for a significant period, had done some intermittent work here, some voluntary work and had a circle of friends. He was entitled to conclude that the appellant would be able to find work and engage in voluntary

service and make friends on returning to India. He was also entitled to place weight on the fact that the appellant's stay in Britain had been unlawful and therefore he had always known that his position was precarious. He did not take into account as weighing in the balance against the appellant the fact that he had worked unlawfully.

39. Indeed, the judge could have in that paragraph mentioned the fact that the appellant had said that he phones his parents, two sisters and a brother who are in India, once a week.
40. In all we consider that his consideration of the rights of the appellant under Article 8 of the ECHR was fully open to him on the evidence.
41. We therefore find that there are no material errors of law in the determination of the First-tier Judge and his decision, dismissing this appeal both under the Immigration Rules and on human rights grounds shall stand.

Signed

Date 26th November 2013

Upper Tribunal Judge McGeachy