



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/17768/2013

THE IMMIGRATION ACTS

Heard at Field House
On 10th September 2014

Determination Promulgated
On 9th October 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

JALIL MANSOOR
(Anonymity Direction Not Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Nasim, instructed by M-R Solicitors
For the Respondent: Mr R Hopkin, Home Office Presenting Officer

DETERMINATION AND REASONS

The Appellant

1. The appellant is a national of Pakistan, born on 13th November 1976 and he appeals against a decision of the respondent dated 30th April 2013 refusing the appellant

leave to remain on the basis of fourteen years' continuous lawful residence under paragraph 276B(i)(b) as it was not accepted that he accrued fourteen years' continuous lawful residence.

2. The appeal was first heard by First tier Tribunal Judge Obhi on 30th January 2014 who dismissed his claim under the immigration rules and on human rights grounds. An application for permission to appeal was made by the appellant on the basis that the sole issue to be determined was whether the clock stopped upon service of an enforcement notice in 2006. No record of any such agreement was noted in the record of proceedings. A subsequent direction was issued by Judge Obhi to the respondent to produce all the documentary evidence that was submitted by the appellant with his application for indefinite leave to remain. The appellant was directed to file any further evidence as he saw fit. Judge Grimes found that for Judge Obhi to dismiss the appeal on the grounds of a lack of evidence was procedurally unfair which went to the heart of the decision. Judge Grimes set aside the determination in its entirety.
3. The matter was listed before Judge Grimes but a transfer order was made and the matter listed for a fresh hearing before me.

Respondent's Explanation for Refusal

4. The reasons for refusal letter stated that the appellant had claimed in the Method of Entry Questionnaire to have entered the UK on 25th January 1997 with the help of an agent but despite numerous checks his entry could not be traced and he was considered to have entered the UK illegally.
5. On 6th December 2006 the refusal letter stated he was encountered at Heathrow Airport attempting to embark from the UK. The records showed that he did not have leave and he was issued with form IS.151A informing him of his status as an illegal entrant and his liability for removal.
6. The appellant made an application for leave to remain on 23rd March 2011.
7. The reasons for refusal letter read as follows.

"You have stated that you have resided in the UK since 25th January 1997, a period of sixteen years and three months. You have provided some evidence in support of your claim. However whilst you may have been resident in the United Kingdom since 25th January 1997, on 6th December 2006 you were issued with a form IS.151A as an illegal entrant. On the date of service of this document it is considered that you stopped accruing time which could be counted towards long residency. Any time you have remained in the UK since the service of your IS.151A since this date cannot be considered. Your eligible period consists of 25th January 1997 and 6th December 2006, a period of nine years and ten months. This is far short of the minimum period required under paragraph 276B(i)(b) of the Immigration Rules."

8. As a result the appellant's application was refused.

9. The respondent also considered the matter further to paragraph 276ADE of the Immigration Rules and found that he had not resided in the UK for a period of at least twenty years contrary to paragraph 276ADE(iii).
10. He was considered to be an independent adult who had worked in the United Kingdom and he could be expected to support himself in Pakistan should he return. It was accepted that he may have spent some time in the UK but he had nevertheless spent the majority of his life in Pakistan including his formative years and could be expected to readapt there. It was considered that having resided in Pakistan for his formative years he would be able to speak the native language and have a knowledge of life there. Further he would have retained some family ties to Pakistan. He may well meet some hardships but nevertheless it was reasonable to expect him to do so.
11. The reasons for refusal letter from the respondent also stated the following.

“That your precarious immigration status meant that you could be returned abroad at any time and, after you were served with form IS.151A in 2006 we consider that you knew you were liable for removal from this country”.
12. He had not provided any evidence to show that he had any family ties to persons settled in the UK or other compassionate and compelling ties. Any such ties could be maintained from abroad through modern means of communication and visits.

Conclusions

13. I find that the letter of refusal issued by the respondent does not accept that the appellant had been in the UK from 1997 to 2006. The letter uses the word “may have been resident in the United Kingdom since 25th January 1997”. The letter refers also to an “eligible period consisting of 25th January 1997 to 6th December 2006”, a period of nine years and ten months. The respondent appeared to proceed on the basis that the eligible period was far short of the minimum period required of fourteen years’ continuous residence. I can accept that the letter may have made a typographical error when referring to fourteen years’ continuous lawful residence as opposed to unlawful residence but I do not find that the refusal letter accepts that he had been in the UK between 1997 and 2006 or that the appeal turns on the service or otherwise of the IS.151A.
14. The burden of proof is on the appellant to show that he has been in the UK for the requisite period of fourteen years and for that purpose I turn to the evidence.
15. The appellant disputes that he was served with an IS.151A document and in support of its contention that an IS.151A was served Mr Hopkin produced the CID notes in relation to one Jalil Mansoor with the date of birth of 13th November 1976 stating 6th December 2006 “served with an IS.151A”. I can appreciate that the reference is brief and the evidence in support of this consists of the CID notes only. The appellant in contradiction asserted that he never attempted to leave the United Kingdom and this does beg the question as to how he facilitated his re-entry.

However the appellant accepts that previously he entered the United Kingdom illegally and without detection. In his Method of Entry Questionnaire he stated that he came to the UK through an agent on a false passport and as the appellant was able to obtain entry by deception into the UK he knew how to facilitate entry a second time after his departure in December 2006. His denial in the oral evidence must be seen in the context that he was previously prepared to enter the UK illegally, with a false passport, and I place little weight on his denial of receiving the IS 151A. Someone with the same name and same date of birth as the appellant is recorded on the Home Office system as having been served with an IS.151A notice at the Embarkation Unit of Terminal 3 as part of "Operation Union".

16. If that indeed is correct then the appellant's clock would have stopped as at that date. He cannot show 14 years residence. Mr Hopkin in his submissions challenged the identity of the appellant in the event that this IS151A was served not on him but on someone else.
17. However, Mr Nasim invited the application of **MH (Respondent's bundle: documents not provided) Pakistan** [2010] UKUT 168 (IAC) *Rule 13 of the First Tier Tribunal Rules requires an unpublished document to be supplied to the Tribunal if it is mentioned in the Notice of, or Reasons for Refusal or if the Respondent relies on it. Because the Notice of, or Reasons for Refusal form the statement of the Respondent's case, however, the Tribunal is likely to assume that a document mentioned in either, but not supplied to the Tribunal, is no longer relied on.*
18. **MH** related to the burden of proving the falsity of documents and in contrast this case referred to the production of an IS151A. Nonetheless there was a previous direction from Judge Grimes that the IS151A was produced and it was not. The respondent cannot rely on the IS151A mentioned itself but with the production of the CID notes I find that the respondent has produced evidence to show that the appellant was indeed served with an IS151A to which some weight should be attached.
19. Even if that is not the case and the IS.151A was served on someone with the same name and date of birth of the appellant, the question is has he shown that he has been in the UK since 1997?
20. What is striking about this case is the very limited nature of the documentation. There was a direction from Judge Obhi to the respondent to produce the evidence sent with the appellant's original application. This was not forthcoming. Regrettably the Home Office could not supply the documentation presented with this application but equally it would appear that the solicitors who remain instructed could only provide limited elements of the documentation and had clearly not kept copies of all of the documentation presented.
21. Nonetheless a record of that information is retained in a letter from M-R Solicitors dated 7th March 2011 which accompanied an application form SET(O) for long residence and/or under Article 8. The supporting documentation is recorded by the solicitors in that letter and a schedule is set out on page 5 of that letter of the

documentation that was presented. For ease of reference I will set out that documentation that was said to have been presented.

Documents Submitted

22. The following documents were submitted by the appellant's representative:
- a. **Identity documents:** two passport size photographs of the applicant, the applicant does not have a passport, Pakistani Identity Card of the applicant and attested certificate.
 - b. **English language requirement:** ESOL Skills for Life Certificate and covering letter from Mont Rose College of Management & Sciences dated 24th January 2011.
 - c. **1997-1998 supporting documents include:** house/flat share agreement dated 15th November 1997, letter from Sareen Computer Learning Centres dated 20th March 1998, certificate in basic computing level 1 dated 20th March 1998, invoice from Rani Fashions dated 16th September 1998.
 - d. **1999-2000 supporting documents include:** house/flat share agreement dated 13th September 1999, Rani Fashions invoices dated 18th November 1999 and 2nd March 2000, letter from Cell Communication dated 12th December 2000.
 - e. **2001-2002 supporting documents include:** wage slips from Cell Communications Ltd dated x 11, letters from Cell Communication Ltd x 3, letter from Café Also dated 18th September 2002, house/flat share agreement dated 20th August 2002, wage slips from Café Also Ltd x 2.
 - f. **2003-2004 supporting documents include:** house/flat share agreement dated 19th February 2003, wage slips from Café Also Limited x 15, P60 documents dated 2003-3 and 2004-5.
 - g. **2005-2006 supporting documents include:** letters from Tomcorn Leisure dated 17th June 2005 and 25th November 2005, letter from Café Also 22nd July 2005, wage slips from Café Also Limited x 2.
 - h. **2007-2008 supporting documents include:** certificate from the Royal Institute of Public Health dated 25th June 2007, letter from Café-au-lait dated 4th December 2007, house/flat share agreement dated 30th September 2008, letter from Loans and Loans dated 18th April 2008, wage slips from Café-au-lait x 8, P60 dated 2008-9.
 - i. **2009-till date supporting documents include:** house/flat agreements dated 29th September 2009 and 28th September 2010, wage slips from Café-au-lait x 2, Veolia Water bill dated 10th February 2011; and

j. **Further supporting documents:** NHS Medical Card dated 22nd November 2006. Journal of notes provided by applicant's medical practitioner from 13th December 2002 till date.

23. The evidence in relation to the appellant's health records appears to be the best evidence produced and I turn to the documentation that was presented by the solicitors, the copies of which they had retained, and this included a letter from Dr Azim and Partners dated 30th April 2013. This however merely confirmed that a person with the appellant's name and date of birth was registered with that practice. No photographic evidence was produced. Even if I accept this was him, I note that the letter from the doctor states "this letter was requested by the patient to confirm that he/she has been registered with the practice since 14th December 2002". What this letter does not say is that he was indeed registered with that practice from 2002.
24. There is a previous letter from the Grovemead Health Centre from a Dr Shelley, dated 20th December 2010 stating "he joined the surgery on 13th December 2002. He has been living at the above address (according to our records) since 11th October 2006. This letter has been prepared at the request of Mr Mansoor".
25. The practice of Dr Azim and Partners and the Grovemead Health Centre who wrote the letter on 20th December 2010 appears to be at the same premises, although the doctors are entirely different. There is no confirmation that even though the appellant was registered that he was actually *living* at the address as indeed the letter of 2010 indicated. He may have been registered but his attendance was not recorded for a period of six months and the rules stated that residence would not be considered to have been broken where an applicant was absent from the United Kingdom for a period of six months or less at any one time.
26. There is also a Grovemead Health Centre notification of change of name/address for the appellant dated 11th October 2006 and what appear to be medical notes which were printed on 4th January 2011 indicating various attendances at the practice in December 2002, no attendances in 2003, attendances in 2004 and 2005 but no confirmation between 12th October 2006 and 11th May 2007 of any attendances at the practice. Indeed it is on 6th December 2006 that the Home Office claims that he has left the country.
27. I review the documentation which was listed as supplied with the original application. There is a tenancy agreement for 1997, a Sareen Computer Learning Centre's document for 20th March 1998 and correspondence from Café Also regarding employment dated 18th September 2002 and Cell Communication dated 28th March 2002, and May 2002.
28. I can identify documentation that the appellant produced a P60 for the tax year 2004 to April 2005 and for April 2003 to April 2004 and tenancy agreements.
29. The documentation said to be sent by the solicitors to the Home Office in support of his residence in the UK between 2003 and 2004 referred to a flat share agreement

which was, according to the document produced, due to expire in February 2004. There was a further tenancy agreement stated from 2009.

30. The appellant produced letters that did refer to correspondence from Café Also but this terminates his employment on 22nd July 2005. The Tomcorn Leisure letter referred to on 25th November 2005 advised that his membership was about to expire.
31. There is no confirmation within the documentation provided by the appellant's solicitors that he was in the UK between December 2006 and July 2007. None of the documentation forwarded by the solicitors either with the application or in support of his appeal to the Tribunal supported the appellant's residence in the UK in 2005 except for the letter from Dr Shelley dated December 2010, which recorded his registration with the practice. The accompanying documentation was stated to be a 'Journal of Notes' from 'Dr.Grovemead health which consisted of entries of which the dates were jumbled but one sheet which showed a sequential record of the following entries;
- | | |
|----------|-------------------------------|
| 12/10/06 | Administration change address |
| 6/12/06 | Mobile number |
| 11/05/07 | Current smoker |
| 11/05/07 | Smoking cessation advice |
32. There was no record of attendances during the period in question and I am not satisfied that the appellant has shown that he was in the UK despite production of an NHS Medical Card dated 22nd November 2006. The appellant confirmed that he did not visit the doctor for a two year period during this time because he did not get sick. It is for the appellant to prove his case and on a comprehensive review of the documentation provided by the appellant I am not satisfied that he has demonstrated that he has been in the UK continuously for fourteen years to the date of his application in April 2013.
33. The appellant claims he did not have a bank account and thus could not produce any evidence of a financial nature but he pulled out an IS.96 with a plastic PIN code attached to it. The appellant maintains that he obtained this PIN code by accident when he had to submit his documentation at government offices. I find this unbelievable. In sum I find the appellant's evidence not credible.
34. The appellant had no supporting statements, no supporting friends in attendance at court to confirm that he had indeed been in the UK for the length of period that he claims and bearing in mind he states that he has come to the UK in 1997 and never left I find this not credible.
35. Even if the IS151A is discounted, because it was not produced by the respondent and the 'clock' has not stopped, the CID notes are still valid evidence to indicate that the appellant did leave the UK which contributes to the finding that he has not been

in the UK for a continuous period of 14 years. There is no record of his re-entry merely the evidence identified above to show his presence.

36. I turn to the consideration of his Article 8 claim. I accept that the appellant may have established a private life in the UK and indeed he was able to produce documentation including an NHS Medical Card dated 22nd November 2006. As I state I do not accept that this shows that he was resident in the UK. His application was filed prior to 9th July 2012 and thus falls to be considered, as agreed by Mr Hopkin under the 'old rules'. Despite the transitional arrangements I have considered the matter in accordance the **Razgar v SSHD [2004] UKHL 27** principles .

37. Owing to the low threshold required in order to engage a right to a private life I find that he has established a private life here. The removal, however, is in accordance with the law and necessary for the protection of the rights and freedoms of others through immigration control and the economic wellbeing of the country. I take into account Section 117B of the Nationality, Immigration and Asylum Act 2002 and in particular that I am to have regard to the fact that little weight should be attached to private life which has been established precariously. The appellant albeit that he claims he is of good character and behaviour entered the UK illegally and during the periods he has been in the UK, has remained illegally. Even if all the documentation he presented is taken into account it does not support his claim to have remained in the UK for the length of time he states and I am not satisfied that he has remained in the UK as he claimed.

38. **Huang v SSHD [2007] UKHL 11**

'In an article 8 case where this question is reached, the ultimate question for the appellate immigration authority is whether the refusal of leave to enter or remain, in circumstances where the life of the family cannot reasonably be expected to be enjoyed elsewhere, taking full account of all considerations weighing in favour of the refusal, prejudices the family life of the applicant in a manner sufficiently serious to amount to a breach of the fundamental right protected by article 8. If the answer to this question is affirmative, the refusal is unlawful and the authority must so decide. It is not necessary that the appellate immigration authority, directing itself along the lines indicated in this opinion, need ask in addition whether the case meets a test of exceptionality.

39. Indeed I find that he has in fact returned to Pakistan and has been in the UK illegally at all times. He claims he came to the United Kingdom at the age of 22 years and thus he was educated in Pakistan and grew up there. He is an adult single male without significant health issues (as disclosed by his medical reports) can speak Urdu and confirmed at the oral hearing that he has relations in Pakistan, not least his aunt and her children. The appellant has been able to relocate in the UK successfully, is clearly resourceful and could therefore re-integrate into life in Pakistan. I have taken into account his witness statement but resist his contention that his appeal should be allowed because he is a person of good character with a good social record. He entered and lived in the UK illegally. Although it was claimed that all of his real

friends are in the United Kingdom to support him, none were evident at the hearing. That he is not a threat to national security does not bolster his claim.

Order

I dismiss the appeal further to the Immigration Rules and further to Article 8.

Signed

Date 6th October 2014

Deputy Upper Tribunal Judge Rimmington