



**First-tier Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/39804/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 14 November 2014**

**Decision & Reasons Promulgated
On 21 November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE D G ZUCKER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR PRITAM SINGH

Respondent

Representation:

For the Appellant: Mr S Walker, Senior Home Office Presenting Officer

For the Respondent: Ms A Seehra, instructed by Bhogal Partners, Solicitors,
Hounslow, Middlesex.

DECISION AND REASONS

1. Mr Singh is a citizen of India whose date of birth is recorded as 20 May 1939. On or about 6 July 2012 he made application for indefinite leave to remain in the United Kingdom on the basis of long residence. On 29 August 2013 a decision was made to refuse the application. On 30 September 2013 he lodged a Notice of Appeal with the First-tier Tribunal. His appeal was heard on 6 August 2014 by Judge of the First-tier Tribunal Rothwell sitting at Hatton Cross. In a determination promulgated on 27

August 2014 Judge Rothwell dismissed the appeal under the Immigration Rules having regard to Paragraph 276B but allowed the appeal on human rights grounds.

2. Not content with that determination by notice dated 1 September 2014 the Secretary of State made application for permission to appeal to the Upper Tribunal.
3. In allowing the appeal in the First-tier Tribunal, Judge Rothwell had regard to Appendix FM and paragraph 276ADE of HC395 (as amended) but found that Mr Singh did not meet the requirements. It was also the case that Mr Singh could not benefit from the 14 year long residence rule because as at the date of decision he had only been in the United Kingdom for 13½ years. Judge Rothwell did not find that Mr Singh had a protected family life but found the private life so significant that it would be disproportionate in his judgment for Mr Singh to be removed. By the date of appeal Mr Singh had been in the United Kingdom for over 14 years. He had always lived at the Gurdwara providing daily help there. Additionally Mr Singh had formed friendships amongst the community. Judge Rothwell, contrary to what was later to be asserted in the grounds, had regard to the provisions of Section 117B of the Nationality, Immigration and Asylum Act 2002. That Mr Singh did not speak English was a matter which Judge Rothwell did not feel weighed heavy in the circumstances in which he was living at the Gurdwara and although there was some access to the NHS for tablets for his diabetes, again weighing that against the public interest and recognising that Mr Singh had devoted his life to his faith, teaching and being a full participant within the local Sikh community, with no recourse to public funds and accommodation met by the community, Judge Rothwell found in Mr Singh's favour.
4. The grounds were as follows:-

"The First-tier Tribunal Judge had made a material error of law in allowing the Appellant's appeal. The First-tier Tribunal Judge finds that the Appellant cannot satisfy the Immigration Rules, but allows it owing to the Appellant's private life.

Making a Material Misdirection of Law – Proportionality – Public Interest

- (a) *The First-tier Tribunal Judge concludes that the Appellant's age, charitable works and length of residence means that his removal from the United Kingdom is a disproportionate breach of his rights under Article 8 with reference to his private life ties (paragraphs 32 and 33).*
- (b) *The Secretary of State respectively submits that the First-tier Tribunal Judge, in assessing the individual rights of the Appellant, has failed to consider the wider public interest and all of the factors detailed in Section 117B and with regard to relevant jurisprudence.*
- (c) *Section 117B sets of several factors that are in the public interest. The First-tier Tribunal Judge engages with 117B(2) and 117B(3), namely English language and maintenance but not on those factors outlined at 117(1) and 117(5), namely; that the maintenance of an effective immigration control is in the public interest and*

that little weight should be afforded to a private life that is formed by a person who is unlawfully, or precariously, present in the United Kingdom. In the instant appeal the Appellant arrived in 2000 as a visitor, i.e.: in a temporary capacity and he overstayed (thereby rendering his presence unlawful).

- (d) *The First-tier Tribunal Judge fails to indicate what weight has been given to the Appellant's circumstances, however; on the fair reading of the determination it would seem significant weight (i.e.: enough to outweigh the strong public interest factors) has been afforded to it. This is incorrect in law as Section 117B(5) plainly states. This is material to the First-tier Tribunal Judge's decision to allow the appeal and the conclusion that the public interest is outweighed by a private life that could, in all essential elements, be continued in India.*
- (e) *In Nasim and Others (Article 8) [2014] UK UT25 the Upper Tribunal were of the view that, in keeping with the Supreme Court judgment in Patel and others v Secretary of State for the Home Department [2013] UK SC72, those rights under Article 8 which do not seek to protect an individuals moral and physical integrity would be of limited utility in the overriding proportionality assessment. Furthermore, the Tribunal held that a person's human rights would not be enhanced by not relying on public funds.*
- (f) *In the instant appeal the First-tier Tribunal Judge acknowledges that the Appellant has, and continues, to rely on public funds in the form of NHS support (albeit the extent of the Appellant's reliance on the NHS is down played) [Paragraph 31/33]. The Secretary of State for the Home Department submits that, plainly, such reliance on public funds is material to the proportionality assessment and enhances the basic importance of maintaining a firm and coherent (i.e. effective) system of immigration control that is realised by removal.*
- (g) *The Secretary of State for the Home Department submits, for the reasons set out above, that the decision of the First-tier Tribunal to allow the instant appeal is materially misdirected in law. The First-tier Tribunal Judge has failed to consider the weight to be afforded to the Appellant's precarious/unlawfully accrued private life and, as a result, the proportionality assessment is fundamentally flawed."*

5. On or about 21 October 2014 Judge Brunnen granted permission to appeal thus the matter came before me.

6. I reminded Mr Walker, at the outset of the guidance given in the case of Budhathoki (Reasons for Decisions) [2014] UK UT 00341 (IAC) in which Haddon-Cave J had said:

"It is generally unnecessary and unhelpful for First-Tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons so that the parties can understand why they have won or lost."

7. Mr Walker very helpfully and quite properly in my judgment opened by conceding that grounds a-e were misconceived. In those circumstances whilst he was not abandoning the appeal, they were not pursued. As to the NHS support, Mr Walker pointed out that there was a letter on file showing that the National Health Service had taken over care for the Appellant as long ago as 2001. Mr Walker told me that he had reviewed the entirety of the file and that it was clear that there was considerable evidence before the judge which entitled him to come to the view that he did whereas whomsoever drafted the grounds would not have had that advantage. In the circumstances Mr Walker without abandoning the appeal made no submissions.
8. It was not necessary for me to call on Ms Seehra. I had from her the skeleton argument which had been relied upon in the First-tier Tribunal which in large measure is rehearsed from paragraph 27 of the determination of Judge Rothwell.
9. I come to the view that the grant of permission in this case was generous. There is in my judgment nothing perverse or irrational in the findings that were made by Judge Rothwell. They were findings that were in my judgment open to him. He was entitled, as he did, to take as his starting point the Immigration Rules and then have regard to the wider application of Article 8 ECHR if appropriate. There were sufficient reasons for a consideration of this appeal outside of the Immigration Rules given the age of Mr Singh and the works which he was doing in the community in which he resides. Though Mr Singh had not been in the United Kingdom for 14 years as then required or 20 years as would now be the case, still the number of years in the United Kingdom, coupled with the private life which Mr Singh in the circumstances was enjoying it, entitled the judge to come to the view which he did. In other words the findings were open to the judge. It may be that another judge would have determined the case differently but that it is not the issue. The question is whether it was open to this judge on the evidence that was before him to come to the view that he did. In the absence of any persuasive argument from Mr Walker who clearly and quite properly was unable to advance any argument, I have no hesitation whatsoever in dismissing the appeal.

Notice of Decision

The appeal is dismissed. For the avoidance of doubt the decision of the First-tier Tribunal shall stand.

Signed

Date **21 November 2014**

D G Zucker
Deputy Judge of the Upper Tribunal