



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

Appeal Number: IA/14651/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 26 January 2015**

**Decision & Reasons
Promulgated
On 9 February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

**RAM PRAKASH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Read, Counsel

For the Respondent: Ms Kenny, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of India born on 5 January 1965. He was issued with a visit visa on 19 April 2002 and he used that to enter the UK on 1 May 2002, using his own Indian passport. Any leave as a visitor that was granted to him would have expired no later than 19 October 2002 and thereafter he was an overstayer. The evidence does not suggest he returned to India. The Appellant's claim was that he remained as an overstayer, working illegally in the UK until he was arrested on 3 November 2013.

2. On 11 November 2013 he made an application for ILR outside the Immigration Rules. The basis for that claim was said to be the private life that he had created or enjoyed as an overstayer. I was instructed to look at the witness statement that he filed in support of that claim which says:

“I started working with a number of different builders and worked as a labourer. I am now self-employed and I have never been a burden on the state. I have been within this trade since 2002. I assert I have a successful business which I run. I assert that I pay my tax every year and I assert I am a productive and committed member of society. I assert it has been very difficult to name all the builders I have worked for, however I have worked on projects throughout London. I am heavily involved with the local community and am a significant life member with the local Gurdwara and Hindu temple in the Tooting and Croydon area. I am heavily involved in the work of the Gurdwara and do something there on a regular basis. I have provided donations to the Gurdwara and I am a committed and loyal member. I assert that I have established a life and it would be disproportionate for me to be uprooted from my life here. It would destroy my life and my business. I assert I have nothing to return to in India. I have lost all my ties there. I assert that my case is exceptional, taking into account the risk that I have on my return and although I did not claim asylum this should be considered as the exceptional aspect of case and support my case for consideration under Article 8.”

That last sentence appears to be a reference to a claim that the Appellant travelled to the UK after divorcing his wife, which in turn followed his entry into a marriage that was not accepted by his wife’s family.

3. The Appellant’s private life appeal came before Judge Nicholls on 16 October 2014 and it was dismissed in a decision promulgated on 22 October.
4. The Appellant applied for permission to appeal, relying on three grounds. Designated Judge Zucker on 11 December 2014 granted permission in relation to what appears to be both Grounds 2 and 3, given the way the Appellant’s case has been advanced this afternoon. The grant makes no reference to Ground 1. So the matter comes before me.
5. Put simply, there is absolutely nothing in Ground 1. It is true that the determination of Judge Nicholls starts with the first sentence - “The Appellant is a citizen of Pakistan” which is obviously an error, and indeed a regrettable error. I am satisfied, and indeed Mr Read does not seek to persuade me otherwise, that this is however simply a typographical error. The text of the determination that follows paragraph 1 makes repeated reference to India as the Appellant’s country of origin and no further reference to Pakistan is made at all. It is quite clear that the typographical error in paragraph 1 had no operative bearing on the judge’s mind at all and as a result Ground 1 is wholly misconceived.
6. Ironically the draughtsman of the grounds made his own typographical error in numbering Grounds 2 and 3 both as Ground 2. Mr Read accepts they can, and should, be advanced together and that they in essence raise only one criticism of the judge’s approach to paragraph 276ADE of the Immigration Rules.
7. The operative version of paragraph 276ADE is that which was in force prior to July 2014 as the judge noted and bore in mind - see paragraph 17 of

the decision. The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK under paragraph 276ADE were that at the date of the application, amongst other things, the applicant at (vi) had to show he was aged 18 or above, had lived continuously in the UK for less than twenty years but had no ties including social, cultural or family with the country to which he would have to go if required to leave the UK. Notwithstanding Mr Read's valiant attempts to criticise the judge's approach to this provision, there is no merit in his criticisms. This is a man who came to the UK as an adult, had extensive family in India and who appears on his own case to have maintained his religious ties to the Gurdwara and the Sikh temple in the area in which he has settled in London. There was no basis upon which the judge could properly have found that he had lost all ties to India.

8. In paragraph 20 of the decision the judge notes that there are no categories within the Rules on which the Appellant could rely for leave to remain and that he had admitted under cross-examination to having three brothers and four sisters, all living in India, although he claimed that his mother had died in March 2014 which the judge accepted. He also maintained that he did not keep in touch with his siblings. Whether he had done so, or not, was really of no consequence; they were there, they were available for him to contact, he had not fallen out with any of them, and he did not suggest to any degree that he was unable to renew his contact with them. That is a long way short of the requirement in paragraph 276ADE(vi) of having no ties to the country of origin. I bear in mind the decision in Ogundimu but the facts of this case are not on all fours with the facts of that.
9. In summary therefore this is a man who gained entry to the UK as a visitor, kept his head down, and successfully avoided immigration controls, working illegally throughout. He relied on the charity of those he encountered in the local Sikh community and Gurdawara, presumably both to support himself when he did not have work, and to find the work which he did pursue as a builder. There is absolutely nothing in this history that would engage the approach to private life Article 8 appeals set out by the Supreme Court in Patel and so there is no basis on which I should interfere with Judge Nicholls' decision. There is simply no material error of law disclosed on the decision, and that being so the decision of the Tribunal is confirmed.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge J M Holmes

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

Signed

Date

Deputy Upper Tribunal Judge J M Holmes