



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/19286/2013**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

**Determination
Promulgated**

On 7 April 2016

On 14 April 2016

Before

Deputy Upper Tribunal Judge MANUELL

Between

Mr MUHAMMAD LUTFUR RAHMAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Sowerby, Counsel
(instructed by Hunter Stone Law)

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed to the Upper Tribunal with permission granted by Upper Tribunal Judge Freeman on 18 January 2016 against the decision and reasons of First-tier Tribunal Judge Ian Howard who had dismissed the Appellant's appeal against the refusal on 13 May 2013 of his application for settlement in the United Kingdom under the now repealed 14 year provisions of paragraph 276D of the Immigration Rules and on human rights (Article 8 ECHR) grounds. The decision and reasons was promulgated on 25 August 2015.
2. The Appellant is a national of Bangladesh, born on 5 January 1975. The Appellant claimed that he had entered the United Kingdom and had since been continuously resident since 15 August 1997. The Appellant had given evidence and had called two witnesses. The Appellant had produced various items of documentary evidence, which had included a pay slip for a United Kingdom employer purporting to show that the Appellant was employed in May 1997, i.e., before his claimed date of arrival. The judge not surprisingly dismissed the appeal and found that the Appellant's documents were unreliable. In reaching those findings the judge had accepted that the Appellant's date of entry to the United Kingdom was 15 August 1997, not in 2004 as the Home Office had contended.
3. Permission to appeal in the First-tier Tribunal was refused but was granted by Upper Tribunal Judge Freeman because he considered that it was arguable that there might be an obvious explanation of the discrepant payslip. The Appellant needed to explain how he had worked out the date of his arrival.
4. Standard directions were made by the tribunal.

Submissions

5. Mr Sowerby for the Appellant relied on the grounds of onwards appeal and the grant of permission to appeal. The Appellant had provided a further witness statement dated 8 March 2016 in which he reiterated that he had arrived in the United Kingdom on 15 August 1997. He had

been unable to establish contact with his former employer and so could not add to his previous evidence. His payslips had been provided to him at his specific request (see [14] of his witness statement) and he had not looked at them. The Home Office had not raised any issue about them. The judge had found the error.

6. Mr Sowerby reminded the tribunal that the Home Office had gone as far as requesting an adjournment to verify the Appellant's documents. In the event it appeared that the Home Office had not done so. There had not even been a Home Office Presenting Officer at the First-tier Tribunal hearing.
7. There was a fundamental issue of procedural fairness. The judge had asked no questions of the Appellant. He could and should have done so, either at the hearing or by reconvening. The decision was further inadequate because of the failure of the judge to engage properly with the evidence of the witnesses. Hence the decision was unsafe and should be set aside. The appeal should be reheard by another judge.
8. Mr Sowerby raised a subsidiary question as to whether the original Home Office decision had been in accordance with the law, with reference to Singh v the Secretary of State [2015] EWCA Civ 74. Had the application been considered under the correct Immigration Rules? The tribunal took the view that the correct, pre 9 July 2012 Immigration Rules had been applied because the Home Office had acknowledged that a valid application had been submitted by the Appellant on 2 June 2012. As the Article 8 ECHR element of the Home Office decision had been made after what might be termed "the Singh window" had closed on 6 September 2012 (see Singh [56(2)]), there was no error of law.
9. Mr Tufan for the Respondent relied on the rule 24 notice. He submitted that there was no error of law and the determination should stand. The Appellant had put the documents forward and the judge was entitled to draw conclusions from those documents. In the event it had been shown that no further supporting evidence existed, even if the judge had requested it. There was no possibility of procedural unfairness even when examined retrospectively. The onwards appeal should be dismissed.

10. There was no reply. The tribunal reserved its determination, which now follows.

No error of law finding

11. The grant of permission to appeal by the Upper Tribunal was based on a subtle point, which in effect tested the procedural fairness allegation against any further relevant evidence which the Appellant was given the opportunity of providing. It might well be thought a generous approach.
12. Nevertheless, despite this unusual further opportunity of putting his case, the Appellant was not only unable to show that further questions from the First-tier Tribunal Judge (at either the hearing or by reconvening) could have changed anything, but he further damaged his own case. The Appellant stated that the payslips were not handed to him during his employment and that he had never checked them. That in itself might well be thought strange, as most people would be interested to know whether they had in fact received the wages they had earned and also to confirm that no improper deductions had been made. That checking would be all the more important to a person who acutely aware that he had to provide proof of 14 years' continuous residence and that the Immigration Rules were about to change to his potential disadvantage.
13. In the tribunal's view, Mr Tufan's submission as to procedural fairness was correct. The judge was not obliged to question the Appellant about his payslips and their discrepancies. In fact the discrepancy needed no judicial detective work: it could not have been flagged up more plainly, as the payslip in question is identified on the first page of the index to the Appellant's bundle of documents. The judge must thus have inferred that it had properly been brought to his attention and that no further enquiry on his part was necessary. The Appellant was represented by solicitors and counsel by the time of the hearing, although the Appellant had submitted his documents to the Home Office himself and so his advisors had no responsibility for their production. The Appellant stated that he relied on the documents and so the judge was entitled to consider them against the evidence as a whole which is exactly what the judge did. It is well established that the Home Office have no responsibility to verify

documents produced by an appellant, although the Home Office may elect to do so where resources permit. That election was not, of course, made in the present appeal.

14. As Mr Tufan accepted at the Upper Tribunal hearing, probably the Home Office ought to have challenged Judge Howard's finding in the Appellant's favour over the 2004 visit visa application, which positive finding sat somewhat uncomfortably with his finding about the reliability of the Appellant's evidence generally. It also seems to the tribunal that the Home Office ought to have examined the "15 August 1997" entry stamp in the Appellant's passport, which appears from the photocopy to have been applied with unusual care, but neither of those matters can be considered by the tribunal now.
15. It is thus clear that Judge Howard assessed the Appellant's evidence in as favourable a light as possible. He did not ask how the Appellant had managed to produce so many documents such as old payslips from 1997 which are ephemeral in nature and which the Appellant was under no obligation to retain for more than three years as a taxpayer. Yet perhaps there was no need to ask that question, since the judge found that all of the Appellant's generic documents were untrustworthy. The judge gave secure reasons for that conclusion. In those circumstances, there was little point in discussing the evidence of the witnesses, whose witness statements on the tribunal file were notably brief and which had also been adjusted downwards for the claimed length of acquaintance. Any failure to discuss such evidence could not amount to a material error of law.
16. There was no challenge to Judge Howard's decision to dismiss the Article 8 ECHR appeal. The tribunal accordingly holds that there was no procedural unfairness, no material error of law in the decision and reasons and that there is no basis for interfering with the judge's decision.

DECISION

The making of the previous decision did not involve the making of an error on a point of law and stands unchanged

Signed

Dated

Deputy Upper Tribunal Judge Manuell