



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/21690/2015

THE IMMIGRATION ACTS

Heard at Field House
On 13 June 2017

Decision & Reasons Promulgated
On 20 June 2017

Before

UPPER TRIBUNAL JUDGE BLUM

Between

MR LEKH RAJ
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Mold of Counsel instructed by MT UK Solicitors
For the Respondent: Mr N, Home Office Presenting Officer

DECISION AND REASONS

1. This is a remade decision following a successful appeal by the appellant, Mr Lekh Raj, against the decision of Judge of the First-tier Tribunal Andonian which was promulgated on 12th August 2016 dismissing the appellant's appeal against the respondent's decision dated 27 May 2015 refusing his application for leave to remain on the basis of the private life he had established in the UK.
2. In my decision promulgated on 09 May 2017 I found that the FtJ's decision contained material errors of law. These included a failure to adequately assess the evidence from the appellant's witnesses and the drawing of inferences based on

reasoning that did not support such inferences. I was satisfied that these errors rendered the decision unsafe. The matter was adjourned to be reheard before myself.

Background

3. The appellant is a national of India, date of birth 18 March 1979. He claims to have arrived in the United Kingdom by lorry in August 1997. On 10 December 2007 the appellant was served with a decision informing him of his status as an illegal entrant. He gave a false name and date of birth when encountered by immigration officers on 26 July 2011. He later applied for leave to remain on the basis of his human rights. This application was refused on 17 May 2013. He made another application on the same basis which was refused on 14 April 2014. A further application was made which eventually gave rise to the decision dated 27 May 2015, which is the subject of the present appeal.

The respondent's decision

3. In her decision the respondent noted that the appellant had no children or partner in the United Kingdom. The application was therefore considered under paragraph 276ADE, which relates to private life rights. The respondent noted that the appellant had lived most of his life, certainly his formative years, in India. It was not accepted that he had lost all social and cultural ties. It was noted that he continued to speak Punjabi. The respondent concluded that there were no 'very significant obstacles' to his integration into India (with reference to paragraph 276ADE(vi)). The respondent thereafter proceeded to consider whether there were exceptional circumstances sufficient to warrant a grant of leave under article 8 outside the immigration rules. The respondent made brief reference to an assertion by the appellant that he feared an uncle. The respondent indicated that, if the appellant held such a fear, he was entitled to make a protection claim. The respondent considered, in any event, that the appellant could relocate to another part of India. There was said to be no evidence to support a claim made by the appellant that he would be detained by the Punjabi police as somebody returning to India after being away for a prolonged period. The respondent finally acknowledged that the appellant may have formed bonds and friendships in the United Kingdom, but that these were insufficient to amount to an exceptional circumstance capable of warranting a grant of leave to remain in line with article 8 principles.

Documents Submitted in Connection with the Appeal

4. At the hearing before the Upper Tribunal the appellant relied on the same bundle of documents that was before the First-tier Tribunal. He did not adduce any further documentary evidence for the purposes of the remade hearing.
5. The documents included, *inter alia*, representations made by his former and current legal representatives, a copy of his FLR(FP) application form, a statement from the appellant signed and dated on 27 February 2015, a witness statement from Mohammed Wahid, signed and dated on 19 January 2015 and supported by

a photocopy of Mr Wahid's passport, a witness statement from Mohammed Saquib Yaqub, signed and dated on 19 January 2015 and supported by a photocopy of Mr Yaqub's British passport, a witness statement from Tehal Singh, signed and dated on 19 January 2015 and supported by a copy of Mr Singh's Indian passport containing an ILR residence permit, a witness statement from Shahid Waheed Butt signed and dated at the hearing, a witness statement from Jasvir Singh signed and dated on 19 January 2015 and supported by Mr Singh's passport and residence card, a letter from the respondent dated 2 September 2011 maintaining the appellant's detention, a decision by the respondent, dated 17 May 2013, refusing to grant the appellant leave to remain, a decision dated 11 April 2014 in which the appellant's application for leave to remain was refused, a letter from the Guru Granth Gurdwara, dated 9 August 2011 stating that the appellant had worshipped there since 2001 and that he was honest, hard-working and God-fearing, a letter from Mr Shamsul Hoque, dated 4 August 2011 stating that he knew the appellant since November 1997 and that the appellant resided at his flat in November and December 1997 as a "family friend", and an earlier letter from Mr Mohammed Wahid, dated 6th of August 2011 in which he confirmed that the appellant was resident at his address in 1998 and that he did a lot of voluntary work in the local temple.

The evidence

6. I have maintained a record of the evidence given by the appellant and his witnesses and of the submissions made by both representatives. The following is a brief summary of that evidence.
7. In his statement, which he adopted at the hearing, the appellant confirmed that he was born in Pind village in Punjab, India. He completed both primary and secondary education and passed his matriculation examination at a secondary school in March 1997. His paternal uncle, with whom he and his family lived, was a vindictive and controlling man who bullied the appellant and insisted that he farm the land under the uncle's supervision rather than go to university. The appellant describes his father as being a passive and compliant individual who was also continuously bullied by his younger brother. The only people who cared about the appellant were his younger brother and his mother. She ultimately sold her jewellery and made arrangements for him to leave India in 1997 because the appellant was unhappy and 'mentally unstable'. The appellant arrived clandestinely in August 1997.
8. At paragraph 20 of his statement the appellant remarks that, since he left India in 1997, he has had no contact with his family in India. The appellant's father mysteriously died in 2009. He and his mother believed that the appellant's uncle caused the death of his father and the appellant claims to have a fear of ill-treatment from his uncle. Since the death of his father the appellant's mother no longer lives at the ancestral home and was not reachable by telephone or post. The appellant no longer had any contacts or ties in India and has severed all connections with his country of origin. He has valuable relationships with his

“family members” and friends (although none of the witnesses appear to be related to the appellant). He has established a strong private life in the UK and he communicates in English. He has integrated with the English way of life “at every level” and visits pubs, shops like Tesco, Primark, Boots and M&S, celebrates Christmas, watches football, pays his respects on Remembrance Day, is registered on the electoral roll and casts his vote at the elections (although no evidence of his registration on the electoral roll was provided).

9. In oral evidence the appellant explained that Mohammed Saqib Yaqub, who had written a statement in support of his appeal, had changed job and was unable to attend the hearing. The appellant was not able to contact Mr Hoque, who wrote a letter dated 04 August 2011 stating that the appellant resided at his flat in November and December 1997. The appellant initially stated that he could not find Mr Hoque’s house and that he did try to look for it. Later in his evidence the appellant claimed that he did in fact visit Mr Hoque’s home on 2 occasions but Mr Hoque was not at home and the appellant believed he had moved. The appellant was last in contact with his family in India in 2009, when his father died. The appellant discovered that his father had died when a friend, Baljinder Singh, went to India and then told him. The appellant was asked where he lived between August and the end of October 1997. He lived with Mr Shamsul Hoque at his home in Hammersmith. Later in cross examination the appellant said all he could remember was staying with Mr Hoque for a couple of months and that he could not remember properly as this occurred 20 years ago. From 2003 to 2006 the appellant lived at an address in Southall with 4 or 5 friends, and from 2006 until 2009 he lived with some of the same friends and some new friends at another address in Southall. From 2009 to present the appellant had the use of a room at []. When asked about his proficiency in English the appellant said he could understand “a little bit, maybe talk a bit as well. But not that much.” He had never worked illegally and was supported by various friends and 8 at the Gurdwara. If given permission to work he could do anything including gardening, painting and building work.
10. In cross-examination the appellant explained that the friend who informed him of his father’s death did not know how his father passed away, and the appellant made no enquiries as to how his father died. The appellant’s friend returned to India and the appellant asked him to find out more information. The friend informed the appellant that his mother moved to Kot-is Khan, a town in the Punjab. When pressed, the appellant explained that his mother informed his friend that the appellant’s uncle might have had something to do with his father’s death. When asked why he hasn’t tried to establish contact with his mother the appellant said she was quite elderly and did not have any ideas about telephones. The appellant met Mr Hoque through a friend he met at the Gurdwara.
11. The appellant 1st met Mr Mohammad Wahid at the Osterley cricket club in the beginning of 1998. The appellant initially said he was a member of the club but then said he had not joined the club and was able to play without being a member. The appellant denied having made an application to enter the United

Kingdom as a working holidaymaker. The appellant accepted that he gave a false name and date of birth to Immigration Officers when encountered in 2011. Evidence was briefly reopened during the submissions to enable the appellant to respond to the allegation in the respondent's letter of 2 April 2011 that he was served with an IS151A informing him of his legal entry in the UK on 10 December 2007 and that he subsequently absconded.

12. Mr Muhammad Wahid adopted his statement in which he confirmed he was a British national and owned a catering business. He first met the appellant sometime in 1998 and they were now good friends and played cricket together. Upon the appellant's arrival in the UK Mr Wahid offered him accommodation and the appellant stayed with Mr Wahid until 2003. Mr Wahid believed the appellant had developed a strong social network in the UK.
13. In examination in chief Mr Wahid said he saw the appellant on a daily basis from 1998 until 2003 and thereafter saw him about once a month. In cross examination Mr Wahid described first meeting the appellant when he came with a friend to play cricket at the Osterley cricket club in Southall. Mr Wahid sometimes helped the appellant by buying him food and clothes. In response to some questions from me Mr Wahid indicated that the appellant was not initially a member of the cricket club but became a member in April or May 1998. Mr Wahid knew this because he was playing cricket at the time and is currently an executive member of the club. Mr Wahid indicated that the fees to join the cricket club would have been between 20 and £30 when the appellant joined. Mr Wahid had no criminal convictions.
14. In his statement, which he adopted at the hearing, Mr Tehal Singh confirmed that he had ILR and had known the appellant since 2001. Mr Singh maintained a certain degree of supervision over the appellant as he was a surety in respect of the bail matter. Mr Singh regarded the appellant as a good friend and that all his connections, friends and private life existed in the UK.
15. In examination in chief Mr Singh said he saw the appellant either every week, every 2 weeks or every 4 weeks. In cross-examination he described first meeting the appellant at a Gudwara. The appellant's village was near to Mr Singh's village. Mr Singh knew the appellant's mother and brother. Mr Singh last saw them 3 to 4 years ago when he last went to India. The appellant asked Mr Singh to meet his mother. Mr Singh met the appellant's mother and brother, who were in a poorly condition. This was in a village near Kot-Is Khan. Mr Singh's evidence then became confusing. He initially claimed that he tried to see the appellant's family twice during the same visit but on the 2nd occasion they had moved because of the feud with the appellant's uncle. Mr Singh then claimed that the 2nd occasion actually occurred during a subsequent visit to India 2 years later. In response to questions from me Mr Singh said that there was no point in giving either his or the appellant's address to the appellant's mother as neither she nor the appellant's brother could read or write. They did not ask for a contact address in the UK and he did not give one to them.

16. In his statement Mr Shaheed Butt claimed to have known the appellant since 2003 when they met at an Internet cafe operated by Mr Butt. The appellant was described as being very honest and trustworthy and had very good friends and had developed a strong private life in the UK. In examination in chief Mr Butt said he saw the appellant regularly, and in cross examination Mr Butt described how the appellant would usually take out films which were available at the Internet café. Mr Butt did not know what the appellant did on the Internet.
17. In his statement Jasvir Singh said he knew the appellant since 2003, that they had become good friends, that they celebrated Sikh festivals together and other religious festivals such as Christmas, that the appellant was hard-working and honest and had integrated himself into the British way of life to a large extent. In examination in chief Mr Singh said that he regularly saw the appellant. In cross examination Mr Singh said that he watched football and cricket with the appellant at a pub.
18. Mr Avery invited me to find that neither the appellant nor his witnesses were credible and supported this submission by reference to the inconsistencies in the evidence relating to Mr Hoque, the appellant's membership of the cricket club, the appellant's implausible description of how he obtained accommodation in the UK and the vague nature of the evidence relating to the death of his father. Even if the appellant had entered the UK in 1997 and remained continuously he did not meet the requirements of paragraph 276ADE(vi). The appellant still spoke Punjabi and had maintained strong cultural links with the Punjabi community in the UK and could relocate to another part of Punjab. With reference to the factors in s.117B of the Nationality, Immigration and Asylum Act 2002 the appellant's presence had always been precarious, he had a limited grasp of English, and the whole basis of his stay was based on deception. Whilst he had some friends the public interest outweighed the life he established for himself in the UK.
19. Mr Mold relied on his skeleton argument and invited me to find the appellant and his witnesses were credible. He quickly moved to a submission that I was entitled to allow the appeal outside the immigration rules with particular reference to the authority of *SSHD v SS (Congo) & Ors* [2015] EWCA Civ 387 and the "near miss" principles restated therein. The precariousness of his presence in the UK had to be contrasted with his very long presence.

The law

20. Paragraph 276ADE of the immigration rules contain the requirements to be met by an applicant for leave to remain on the grounds of private life

At the date of application, the applicant:

- (i) does not fall for refusal under any of the grounds in Section S-LTR 1.2 to S-LTR 2.3. and S-LTR.3.1. to S-LTR.4.5. in Appendix FM; and

- (ii) has made a valid application for leave to remain on the grounds of private life in the UK; and
- (iii) has lived continuously in the UK for at least 20 years (discounting any period of imprisonment); or
- (iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or
- (v) is aged 18 years or above and under 25 years and has spent at least half of his life living continuously in the UK (discounting any period of imprisonment); or
- (vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK.

21. Article 8 of the ECHR relates to the right to respect for private and family life. It reads:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

22. Section 117B of the Nationality, Immigration and Asylum Act 2002 contains a number of factors that must be considered by a court or tribunal when considering the public interest factors in an article 8 proportionality assessment.

23. It is for the appellant to discharge the burden of proof under article 8 and the standard of proof to be applied is a balance of probabilities. I can consider any matter which I think is relevant to the substance of the decision, including evidence which concerns a matter arising after the date of the decision. The date for my consideration is the date of the hearing.

Findings and reasons

24. It is pertinent to note at the outset that, despite making assertions in his statement suggesting that his uncle would kill him if he returned to Punjab, the appellant has not made a protection claim. This was, and remains, an option open to him. Mr Mold advanced the appeal firmly and exclusively on the basis of article 8. The evidence relating to the appellant's uncle is, in any event, vague and inconclusive. Whilst his claim to have been mistreated by his uncle is not inherently implausible there is no evidence of the death of the appellant's father and no

evidence of the FIR (First Incidence Report) that was said to have been lodged with the police following the death. In his oral evidence the appellant says he discovered that his father had died when a friend, Baljinder Singh, went to India and then told him. There was no statement from this individual and he did not attend to give evidence at the hearing. In his oral evidence the appellant initially claimed that Baljinder Singh did not say how his father passed away and later claimed that his mother informed Baljinder Singh that she believed the appellant's uncle might have had something to do with the death. This is highly speculative and without any firm evidential foundation. There is simply no evidence to support the appellant's claim that he has an objective fear of ill-treatment if returned to India.

25. Nor would there be any reason why the appellant's uncle would have any continuing adverse interest in the appellant given that the uncle now appears to have obtained that which he set out to obtain (the land belonging to the appellant's father). There was no indication in the appellant's evidence that his uncle had any influence or control over the authorities and there would appear to be no reason why the appellant could not relocate to another part of Punjab if he did believe that he was in danger from his uncle.
26. There are a number of inconsistencies in the appellant's account. At paragraph 20 of his statement he maintains that, since leaving in 1997, he has had no contact with his family in India. Yet at the hearing the appellant stated that he last had contact with his family in India in 2009. Within his statement, at paragraph 40, the appellant claims that his mother shared his belief that his uncle caused the death of his father and that she had warned him not to ever come back home. This is inconsistent with the appellant's claim at paragraph 20 of the same statement that he last had contact with his family in 1997 as his mother would not have been able to warn him not to come home without some form of contact.
27. There is a significant inconsistency between the appellant's oral evidence and the letter, dated 4 August 2011, from Mr Shamsul Hoque. In the letter Mr Hoque states that he knew the appellant since November 1997 and that the appellant resided at his flat in November and December 1997 as a family friend. In oral evidence the appellant was asked where he lived between August and October 1997. The appellant stated without hesitation that he lived with Mr Shamsul Hoque at his home in Hammersmith. This is inconsistent with the letter from Mr Hoque confirming that he knew the appellant "since November 1997." Nor did Mr Hoque make any mention of the appellant living with him from August to October 1997. Later in his evidence, when this inconsistency was put to him, the appellant sought to explain it by reference to the long passage of time since the events. I acknowledge and take into account that a long passage of time may impact upon an individual's recollection. The appellant was however asked a clear and direct question and was adamant in his initial response.
28. I have additional concerns with the appellant's evidence vis-a-vis the letter from Mr Hoque. In his oral evidence the appellant initially said that he could not locate

Mr Hoque because he could not find Mr Hoque's house. He later changed his evidence stating that he could find Mr Hoque's house but that Mr Hoque was not at home on the 2 occasions that the appellant visited. The appellant gave two contrasting descriptions of his attempt to locate Mr Hoque. I find that he has failed to provide a reasonable explanation for this inconsistency and that this undermines his general credibility.

29. There was an inconsistency between the appellant's description of his involvement with the Osterley cricket club and that given by Mr Wahid. After initially claiming to be a member the appellant retracted that claim and said he had never joined the club. This was in stark contrast to the evidence of Mr Wahid who was sure that the appellant did become a member in April or May 1998. This is another factor undermining the appellant's general credibility and reducing the weight that I can attach to his account both of events in India and of his length of residence in the UK and the degree of his integration into British society.
30. In assessing the appellant's general credibility I additionally take into account, as accepted by the appellant in his oral evidence, that he gave a false name and date of birth (he claimed to be Gurwinder Singh, DOB 12/12/1976) when encountered on 26 July 2011 by Immigration Officers. This indicates that the appellant has, in the past, resorted to deception when he believed it would benefit him, a relevant factor in determining the credibility of his claim. I note the assertions in some of the Home Office letters and decisions to the effect that the appellant made an entry clearance application as a working holiday maker in 2004, that he entered the United Kingdom using a false French passport, and that he was wanted as an absconder following service of documents informing him of his illegal status on 10 December 2007. Mr Avery did not have a respondent's file at the hearing and these allegations are unsupported by reference to any other evidence. In these circumstances I attach no weight whatsoever to these assertions.
31. I indicated my surprise at the hearing at the absence of any documentary evidence supporting the appellant's claim to have resided in the UK since 1997. 19 years is a very long period of time. Other than the evidence from his witnesses, and a letter, dated 09 August 2011 from the general secretary of the Guru Granth Gurdwara, claiming that the appellant worshipped there since 2001 and was honest and hard-working and God-fearing, there is no other evidence of his presence. I fully appreciate however that an individual who is unlawfully present in the United Kingdom may well encounter difficulties in obtaining and retaining documentary evidence confirming their presence. In these circumstances I decline to draw an adverse inference based on the absence of supportive documentary evidence.
32. There was no attendance by Mohammed Saqib Yaqub. The appellant claimed that this individual changed job and was unable to attend the hearing because of his employment commitments. There was however no letter either from Mr Yaqub or his employers to this effect. Mr Yaqub maintains that he has known the appellant since 1999 and that they met at a party organised by Mohammed Wahid at a

restaurant in Southall. Other than saying that they remained in contact and became friends, and that he knew about the appellant's situation in India, the statement fails to provide any detailed description of the life established by the appellant in the United Kingdom. In the absence of any opportunity to test Mr Yaqub's evidence, and in the absence of any letter confirming the reasons for his non-attendance (which would have been reasonably open to the appellant to obtain), I find I can attach little weight to this statement. In the absence of Mr Hoque, and for the reasons already given above, I find I can attach no weight to his letter dated 4 August 2011.

33. Despite the inconsistency between Mr Wahid's evidence and that of the appellant relating to membership of the Osterley cricket club, I found Mr Wahid's evidence concerning the length of the appellant's residence in the UK to be generally credible. Mr Wahid gave a full description of how he first encountered the appellant in 1998 and has consistently maintained, both in his letter dated 6 August 2011, in his statement and in his oral evidence, that the appellant resided with him from 1998 until 2003. Mr Wahid indicated that he was a person of good character and there was nothing to suggest otherwise. He gave his evidence in a direct manner, without hesitation, and without any discernible attempt at embellishment.
34. Likewise I found the evidence of Mr Shahid Butt to be measured and plausible. He stated that he first encountered the appellant in 2003 and that they had become very good friends. Mr Jasvir Singh claims to have also met the appellant in 2003 and that they watched sports at a pub together. I did not however find the evidence of Mr Tehal Singh to be reliable. He gave significantly contrasting accounts of his meeting the appellant's mother and brother, as disclosed in paragraph [15] of this decision.
35. Having holistic regard to the evidence from the appellant and from his witnesses, and despite having significant reservations concerning the appellant's credibility, I am persuaded, on the balance of probabilities, and based significantly on my positive assessment of the evidence of Mr Wahid, that the appellant has been present in the United Kingdom since at least 1998. It is impossible to ascertain when he actually first entered the UK but Mr Wahid indicated that the appellant did formally become a member of the Osterley cricket club around April or May 1998, suggesting that the appellant entered the United Kingdom sometime earlier in 1998. Given my general adverse credibility findings I do not accept that the appellant was targeted by his uncle in India, even if this assertion is not itself inherently implausible. Even if I am wrong in my assessment of the appellant's uncle I'm satisfied that the appellant would be able to move to another part of Punjab in order to avoid any adverse attention by his uncle.
36. Having satisfied myself that the appellant has resided in the UK since early 1998, I must consider whether he can meet the requirements of paragraph 276ADE, the immigration rule giving expression to article 8 private life rights. As the appellant's application was made in February 2015 he has not resided in the

United Kingdom for 20 years prior to that time. In his written submissions Mr Mold submits that the appellant can meet the requirements of paragraph 276ADE(vi) and that there are 'very significant obstacles' preventing the appellant returning to India.

37. For the reasons already given in this decision I am not satisfied that the appellant has any reason to fear his uncle in his home village, and that he could, in any event, relocate to another part of Punjab, or India. The appellant is not without qualifications or work experience. In his statement he indicated that he completed both primary and secondary education, passing the matriculation examination at a senior secondary school in March 1997. The appellant thereafter undertook farming on the family's agricultural land. The appellant is relatively young and there was no evidence that he suffered from any physical or mental health condition. The appellant speaks Punjabi and appears to have spent the majority of his time in the UK within the local Punjabi community. There is nothing to indicate that he would have lost his social and cultural connections with India. He lived in that country for the formative years of his life until, on his account, he left aged 18. His friends in the UK have been financially supporting him and there is no reason why they could not continue to do if the appellant returns to India until he is able to find a job and support himself. I find, having regard to these factors holistically, that there are no very significant obstacles preventing his integration in India.
38. I must now consider whether there are any compelling factors outside the immigration rules, consistent with an article 8 proportionality assessment, sufficient to warrant a grant of leave on the basis of the appellant's private life rights. I have no hesitation in accepting, having found that the appellant entered the United Kingdom in early 1998, that he has established a private life in this country during his residence of some 19 years. There is however very limited evidence of the actual nature and extent of the private life established by him in the United Kingdom. The various statements from the appellant's witnesses make vague, unparticularised and highly generalised assertions that the appellant has fully integrated into English society. The witnesses were not asked to expand upon their vague assertions or to describe in detail the manner and degree of the appellant's integration. I accept that the appellant has established a number of friendships. There is however nothing to indicate that these friendships, other than through the provision of financial support, contain any significant elements of reliance or dependency. These relationships could continue albeit through remote forms of contact. The appellant is a healthy young man who has lived within the Punjabi community since his arrival in the UK. His oral evidence, given via the Punjabi interpreter, indicated that was not in fact proficient in English. Other than the weight of years, the friendships established by him, and his attendance at the Gudwara, where he helped out, the appellant has failed to show that he has integrated into English society to any significant degree. There is nothing to show that his daily social and cultural experience and expectations have been shaped by his life in the UK to such an extent that he would have difficulties integrating in India.

39. I must additionally take into account the factors identified in section 117B of the Nationality, Immigration and Asylum Act 2002. The private life established by the appellant occurred when his immigration status was, at all times, precarious. I take into account his claim that, if permitted to do so, he would work, but no evidence of any potential employment was provided. I take into account his lack of proficiency in the English language. I additionally take into account the public interest in maintaining effective immigration controls. I also take into account the fact that, based on my findings that the appellant entered the United Kingdom in early 1998, he may meet the requirements of paragraph 276ADE in early 2018. In *Patel* [2013] UKSC 72 the Supreme Court held that the balance drawn by the rules, and their context, may be relevant to the consideration of proportionality, but that, "... a near-miss under the rules cannot provide substance to a human rights case which is otherwise lacking in merit." In *SSHD v SS (Congo) & Ors* [2015] EWCA Civ 387 the Court of Appeal explained that, if an applicant can show that there are individual interests at stake covered by article 8 which give rise to a strong claim that compelling circumstances may exist to justify the grant of LTE outside the Rules, the fact that their case is also a 'near miss' case may be a relevant consideration which tips the balance under Article 8 in their favour. For the reasons I have already given I am not satisfied there is a strong claim that compelling circumstances exist such as to justify a grant of leave to remain outside the immigration rules as a result of any 'near miss'.
40. Having holistic regard to all these factors I am not satisfied there are sufficiently compelling reasons to warrant a grant of leave to remain under article 8. I therefore dismiss the appeal.

Decision



Signed

Upper Tribunal Judge Blum

19 June 2017

Date