Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/08504/2016**

THE IMMIGRATION ACTS

Heard at FIELD HOUSE	**Decision and Reasons Promulgated**
On 28th March 2018	**On 18th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR A S
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr Bramble (Home Office Presenting Officer)
For the Respondent: Mr V Kulendran (Legal representative)

RE MAKING DECISION

1. The appellant in this matter is the Secretary of State. I shall refer to my previous decision and reasons (EOL decision) promulgated on 23rd February 2018 in which I found an error of law in the decision of the First-tier Tribunal which I set aside. That decision sets out the background facts, the procedural history, and the relevant issues in this matter which I do not repeat herein. In short the Claimant has lived in the UK for 17 years. He does not meet the Rules. He argues that because of mistakes by the SSHD he failed to succeed under the legacy programme, and that factor led to

un fairness and delay which were matters that ought to have been considered by the SSHD in assessing proportionality under Article 8.

2. Having found an error in law I directed that the matter be reheard by way of submissions on the sole issue of Article 8 outside of the Rules having regard to all relevant matters under private life including any past unfairness and having regard to the public interest and under section 117B of the Nationality, Immigration & Asylum Act 2002 (as amended). The preserved facts are as follows:

- The chronology as set out above at paras 2-12 EOL decision.
- The Claimant's immigration history including length of residence of 17 years, use of false identity for entry and claim for asylum, lawful re entry and an unsupported claim for asylum and working without permission .
- The Claimant did not abscond between 2002 and 2010 but it is uncertain as to what if any steps were taken by his solicitors to contact the SSHD from 2002 to 2010 [61-63].
- There is no evidence to support that the Claimant made a human rights claim in June 2001 [62]. He asked for this to be considered on 19.6.2010. It was conceded by the SSHD that if the Claimant had made a HR application he came within the criteria to be considered under the legacy programme created on 5.3.2007 [43].
- The SSHD decided on 17.11.2011 that the Claimant was not entitled to be granted leave under the Legacy programme and having regard to para 395 and Chapter 53 [57-58]. This decision was maintained on 26.7.2013, 3.2.2015 and 1.8.2016.
- The SSHD promptly dealt with all applications and representations made by the Claimant since 2010 [63].
- The Claimant has a wife and children in India with whom he has an on going relationship.

Submissions

3. At the hearing before me Mr Kulendran relied on his written submissions. He applied to admit letters from various firms of solicitors (produced in the submissions folder) as evidence of the Claimant's attempts to regularise his stay (whilst accepting that he did not make contact directly with the SSHD). I agreed to admit the further evidence under Rule 15(2) UT Procedure Rules 2008. Mr Kulendran further relied on SSHD v SAID & others [2018] EWCA Civ 627 at paragraph 153 (a copy of which was forwarded to me following the hearing), as to the relevance of delay in an Article 8 assessment. He relied on the length of residence accumulated by the appellant under Article 8 and the delay and unfairness.

4. In response Mr Bramble emphasised that the resultant delay had in fact enabled the Claimant to remain in the UK which was to his benefit rather

than detriment. There was no evidence of the nature and extent of any private life built up by the Claimant over the years. The focus of the submissions was simply the length of residence and unfairness. The SSHD had to consider the public interest under section 117B of the 2002 Act. The Claimant had no lawful leave and any private life was built up whilst in a precarious situation. The Claimant had been working without permission. The Claimant had a wife and children in India. In all the circumstances the public interest outweighed the private life of the Claimant.

Discussion and conclusion

5. As stated above I rely on my EOL decision which set out the factual background and my analysis of the legal issues leading to my conclusion that the FtT erred in law in allowing the Claimant's appeal under Article 8 outside the Rules. I accept that the period of residence is a compelling factor capable of justifying consideration outside of the Rules.

6. I heard the submissions made by both representatives and have taken into account the Claimant's detailed written submissions and case law cited together with the decision of **Said**. I am satisfied that the Claimant has established a private life in the UK by reason of the length of residence of 16 years. I find that the Claimant did instruct two firms of solicitors during 2002 and in 2010/2011 in an endeavour to regularise his stay and to that extent I find that there was some attempt to regularise his stay and that he had not absconded. The focus of the Claimant's case was long residence, delay and unfairness. There was and is no evidence of any substance adduced with regard to the nature and extent of his private life in the UK at the various hearings before the FtT. I have been provided with a letter of support from the President of the Gravesend Gurdwara which confirmed that the Claimant is honest, hardworking and has contributed to the local Sikh community, which I accept. There is no issue as to family life; it is accepted that the Claimant has a wife and children in India with whom he remains in contact and has an on going relationship.

7. There is no merit in the argument that delay has led to unfairness to the Claimant. I entirely accept Mr Bramble's submission that any delay has been to the benefit of the Claimant in that he has remained in the UK for longer than he would otherwise have been able to. In terms of any unfairness caused to the Claimant I find that whilst there were mistakes by the SSHD which led to unfairness, this does not amount to an historic injustice as there was no illegality established. I refer to and rely on the EOL decision on these issues at [26-34]. I find that the SSHD has considered and reconsidered all aspects pursued by the Claimant over the years and properly given effect to the various decisions made by the first tier Tribunals. It is accepted that the Claimant was eligible to be considered under the Legacy Programme, but the Claimant did not have any legitimate expectation of succeeding under the Legacy Programme. I am satisfied that the SSHD has properly considered the Claimant's application under the Legacy programme and rejected the same. I have preserved the findings of fact made in respect of these matters and which are set out above, and on which I rely. The written submissions are an

attempt to have those matters re litigated, which I do not propose to do and cannot be justified.

8. There is no evidence to show any interference with the Claimant's private life other than there will be some readjustment required on return to India after such a long absence. However, the Claimant will be able to continue to practise his faith and to attend the Gurdwara in India. In addition the Claimant will have support both practically and emotionally from his family in India to re establish a private life in India. There is no evidence of any aspect of the Claimant's private life that cannot re replicated in India. The Claimant's private life was established when his immigration status was precarious and he entered the UK using a false name to make a claim for asylum. The Claimant has also worked in the UK without permission. I find no interference with the private life based on delay or historic injustice. Any interference is in accordance with the Law as the decision was made to refuse the Claimant's human rights application. I entirely reject any argument that there was an unlawful decision made and this was accepted by the most recent FtT; there has been no abuse of process by the SSHD. My primary conclusion is that there will be no interference with the Claimant's private life, but if I am wrong then I consider proportionality.

9. I have regard to section 117B of the 2002 Act (as amended). I find that the appellant does not speak English (section 117B(2). There was some evidence that he was supported financially by his cousin, although he was working without permission and so it cannot be said that he was financially independent (section 117B(3)). I acknowledge that there is no evidence of reliance of State funds, yet there is no evidence of any payment of tax or National Insurance. The Claimant has used deception in the past having entered using a false identity and made a spurious claim for asylum. There is nothing qualitatively in his private life that carries any weight in favour of the Claimant's private interests other than the length of his residence. The Claimant has not met the immigration Rules based on his long residence and the rules are designed to reflect where the public interest lies. The Claimant failed to meet the rules in terms of the length of residence, in terms of integration in the UK and his circumstances in India. As stated above there is some evidence of the Claimant having integrated in the Sikh community but there is nothing to show any particular ties or connection that cannot be replicated in India. There was no evidence of any close ties in the UK. The Claimant's own family are living in India which is of significance in the proportionality assessment. Little weight is given to his private life as it was established when his immigration status was precarious (section 117B(5)). Section 117B(6) does not apply.

10. Having considered all of the issues under Article 8 I conclude that the maintenance of immigration control is public interest and that there is no evidence to satisfy me that the private interests of the appellant outweigh the public interest.

Decision

11. The decision that I remake is to dismiss the Claimant's appeal.

Signed Date 16.4.2018

GA Black
Deputy Judge of the Upper Tribunal

ANONYMITY ORDER

Direction Regarding Anonymity – rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

NO FEE AWARD

Signed Date 16.4.2018

GA Black
Deputy Judge of the Upper Tribunal