



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

Appeal Number: PA/06601/2018

THE IMMIGRATION ACTS

**Heard at Newport
On 7 December 2018**

**Decision & Reasons Promulgated
On 21 February 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ABDUL [R]
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr Howells, Senior Home Office Presenting Officer
For the Respondent: Mr Khan, instructed by Maya Solicitors

DECISION AND REASONS

1. I shall refer to the appellant as the respondent and the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant Abdul [R] was born on 4 February 1980 and is a male citizen of Bangladesh. He appealed against a decision of the respondent dated 30 April 2018 refusing his application to remain in the United Kingdom on the grounds of long residence. The First-tier Tribunal (Judge Povey) in a decision promulgated on 4 July 2018 allowed the appeal. The Secretary of State now appeals, with permission, to the Upper Tribunal.
2. At [14], the judge wrote:

“It was not in issue the appellant was in the UK from at least September 2008 when he submitted his first unsuccessful application for leave to remain. It was also not in dispute the appellant made a number of unsuccessful applications and submissions between then and his current application, submitted on 1 November 2017. The appellant has never had any immigration status in the UK, has absconded in the past and has worked illegally. He only submitted his now abandoned international protection claim in the face of removal directions.”

3. I was told that the appellant withdrew his international protection claim on the morning of the First-tier Tribunal hearing.

4. At [15]:

“The appellant’s poor immigration history would not prevent him meeting the Immigration Rules if, as he claimed, he has been in the UK continuously for over twenty years. Given the appellant’s conduct outlined above, his credibility is somewhat damaged. However, those factors do not impugn his witnesses, each of whom I found to be plausible, credible and consistent.”

5. The judge went on to examine the evidence of the witnesses including the appellant’s elder brother (Mr Hamid), another brother (Mr Khalik) and a Mr Uddin regarding whom the judge wrote at [18]:

“Mr Uddin’s evidence was particularly compelling. He was a man with whom the appellant lived from 1996 until 2000. He recalled meeting the appellant off a coach in Coventry and confirmed his friendship with Mr Ali (who has since passed away). His evidence was not materially challenged in cross-examination and I had no reason not to accept it.”

6. The judge concluded at [19]:

“Given the consistent and compelling evidence of the appellant’s witnesses, I found the appellant established to the required standard that he had been in the UK continuously at least since 1996.”

7. In the grounds of appeal, the Secretary of State quotes from the Presenting Officer’s note of the First-tier Tribunal hearing:

“The appellant’s oral evidence was that he had lived with his eldest brother since 2007 until now and in all that time he had only lived a few months spent with his younger brother in Rochdale when he had a girlfriend.

The elder brother’s evidence differed he at least spent two-three years with his younger brother.

Finding the younger brother said he has never lived with him. The appellant and elder brother could also not provide details of exactly what was said but convinced them that they were brothers after thirteen years of not seeing each other, taking into account that those thirteen years the appellant would have changed a lot as the appellant would have aged from 13-14 to 27.”

8. At the Upper Tribunal hearing, Mr Khan who appeared for the appellant (before the First-tier Tribunal), did not dispute the accuracy of the Presenting Officer's note of evidence. Further, following the grant of permission, a direction had been given for the Presenting Officer to produce her Record of Proceedings and a statement. I have a statement from Ms Wallace, the Presenting Officer before the First-tier Tribunal. I also have her handwritten notes of evidence which are helpfully legible.
9. I reserved my decision.
10. There seems to be little doubt that the witnesses who appeared before the First-tier Tribunal impressed the judge. However, there were serious limitations in their evidence which the judge may not have fully appreciated. First, their evidence should have been assessed on the basis that the judge had not found the appellant himself, who had a very poor immigration history, to be a credible witness. To that extent, the witnesses were incapable of giving corroborative evidence of the appellant's account because that account was unreliable. The witnesses are able to prove particular facts of which they have personal first-hand knowledge; for example, they have been able to tell the judge about particular periods of time during which the appellant had lived with them. However, it is necessary for the appellant to prove that he has lived in the United Kingdom for twenty years. The mere fact that he may have spent four years during that period living with a brother or friend fails to prove what he is required to prove. Secondly, in the light of Ms Wallace's evidence and her note of the hearing, I am not satisfied that the cogency and consistency of the witness's evidence was as strong as the First-tier Tribunal Judge states in his decision. Given that Mr Khan was unable to tell me that Ms Wallace's note of evidence is inaccurate, I am satisfied that problems of consistency in the evidence of the witnesses have not been adequately considered by the judge.
11. In light of the above, I consider that this is an appeal which needs to be reheard *de novo*. The next Tribunal is likely to hear evidence from a number of witnesses. In consequence, it is better that what may prove to be a lengthy fact-finding exercise is undertaken in the First-tier Tribunal. Although I direct that none of the findings of fact of the First-tier Tribunal shall stand, Ms Wallace's statement and note of evidence do stand as a record of what was said by the witnesses at the First-tier Tribunal hearing. Her statement and note may, therefore, be put in evidence at the next hearing, if either party considers it necessary. The First-tier Tribunal will also need to consider what evidence, if any, the appellant may be able to adduce in order to address any gaps in the 20 year narrative.

Notice of Decision

The decision of the First-tier Tribunal which was promulgated on 4 July 2018 is set aside. None of the findings of fact shall stand. The attention of the parties is drawn to what I have said above at paragraph [11] regarding the evidence which the First-tier Tribunal

will need to consider when it remakes the decision. The appeal is returned to the First-tier Tribunal (not Judge Bovey) for that Tribunal to remake the decision.

No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Lane

20 February 2019