



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12488/2019

THE IMMIGRATION ACTS

Heard remotely via video (Skype for Business)
On 12 March 2021

Decision & Reasons Promulgated

On 23 March 2021

Before

UPPER TRIBUNAL JUDGE BLUM

Between

P S A
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Sing, solicitor of Twinwood Law Practice Ltd
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This decision follows a remote hearing in respect of which there has been no objection by the parties. The form of remote hearing was by video (V), the platform was Skype for Business. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

2. This is a remade decision following the identification of material legal errors in the decision of Judge of the First-tier Tribunal Paul, promulgated on 10 February 2020, who dismissed the appellant's appeal against the respondent's decision dated 13 December 2019 to refuse his protection and human rights claim. The 'error of law' decision, promulgated on 1 October 2020, was made by Upper Tribunal Judge Finch without a hearing pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
3. The grant of permission to appeal to the Upper Tribunal was restricted to the issue whether Judge Paul fell into error by failing to consider the appellant's private life under the Immigration Rules with regard to whether he had lived in the UK continuously for at least 20 years. The respondent accepted that Judge Paul failed to consider and make a finding in relation to paragraph 276ADE(1) of the Immigration Rules and in respect of the private life the appellant had established in the UK. Judge Finch found that Judge Paul failed to make any clear findings as to the appellant's claim to have resided in the UK for more than 20 years or to consider whether this entitled him to leave within or outside the Immigration Rules.
4. Judge Finch set aside the decision of Judge Paul, but it is clear from her decision, read as a whole, that this was only in respect of the appellant's Article 8 private life claim. There was no application for permission to challenge Judge Paul's finding that the appellant would not be persecuted in India on account of any historic pro-Khalistan activities. Nor has there been any challenge to Judge Paul's finding that the refusal of the appellant's human rights claim did not disproportionately interfere with the appellant's relationship with AM, a Romanian national. Those unchallenged findings are maintained.

Background

5. The appellant is a national of India, born on 15 May 1975. He claims to have arrived in the UK clandestinely in July 1998. This claim is not accepted by the respondent. According to the Reasons for Refusal Letter the appellant applied for Leave To Remain (LTR) on 29 October 2012 on Article 8 ECHR grounds. This application was refused on 4 November 2013. On 24 June 2014 the appellant applied for LTR on the basis of his private/family life. This application was refused on 4 September 2014. On 1 April 2019 the appellant attended the Asylum Intake Unit (AIU) and lodged his asylum claim on 10 April 2019.
6. The respondent indicated in her Reasons for Refusal Letter of 13 December 2019 that she was not satisfied the appellant gave a credible account of the activities he claimed would expose him to a real risk of persecution in India. Nor was the respondent satisfied the appellant had produced any independent evidence (as opposed to statements from friends and family) of his presence in the UK prior to October 2012. The respondent acknowledged the appellant's claim to be in a

relationship with AM and their claim to have been living together since September 2019, but the respondent was not satisfied the appellant and AM had been living together in a relationship akin to marriage for at least two years prior to the date of his application, or that there was sufficient evidence of a relationship between them or sufficient evidence of any cohabitation. Nor was the respondent satisfied that the requirements for LTR under Appendix FM were met given that AM was neither British nor settled in the UK.

7. The respondent rejected the appellant's claim under paragraph 276ADE(1) because no adequate evidence had been adduced to demonstrate that he had resided in the UK continuously for at least 20 years (paragraph 276ADE(1)(iii)) or that there would be 'very significant obstacles' to his integration in India (paragraph 276ADE(1)(vi)).

The hearing to remake the decision

8. The appellant did not serve any further documentary evidence in support of his appeal. He relied on the documents contained in the respondent's bundle prepared for the First-tier Tribunal hearing and his own 44-page bundle of documents prepared for the same hearing.
9. The respondent's First-tier Tribunal bundle contained several letters and statement from individuals who claim to have known the appellant for varying periods of time. These included, *inter alia*, an undated manuscript letter from Mr and Mrs G who claimed to have known the appellant since January 2000 when they met in their local Gurdwara (it was further claimed that the appellant's relationship with the family deepened over the years, that they celebrated many festivals together and that the couple's children were extremely close to the appellant), an undated manuscript letter from R J K who claimed to have known the appellant since 2005 (and that they had met up on different occasions), a statement dated 23 November 2019 from MSS who claimed to have known the appellant since 2001 (and that they had spent quality time together, were good friends, and that the appellant had helped a lot with his baby), a statement dated 24 November 2019 from Mr HSD who claimed to be the appellant's cousin and to have met him in the UK in 2003 (the appellant is said to have helped his cousin discover more about England through his prior knowledge and experience, to have lived with his cousin "for a long period of time" before moving out to live with AM, and to have a very special bond with his cousin's three children), a letter dated 25 November 2019 from the Treasurer of the Gurdwara Baba Sang Ji Smethwick stating that the appellant "is a regular to 2009/2010 attendee for a time" and helped with events, a manuscript letter dated 25 November 2019 from SS stating that he met the appellant in the UK in August 1999, that they regularly meet and that the appellant is a good friend, and a statement from AM stating that they had been in a relationship since January 2019 (although the answers given by the appellant in his asylum interview indicated that they only began living together

around the beginning of September 2019), that she was a nursery teacher with an annual income of £21,800, and had herself lived in the UK since 2014.

10. In his statement dated 22 January 2020 prepared for the First-tier Tribunal hearing the appellant asserted that he had lived in the UK for 21 years, that he knew lots of people who were able to confirm his residence in the UK, that he had a strong relationship with AM and that AM could not live in India as she had allergies and various medical conditions and would not be able to cope with the climate or food.
11. In an undated and unsigned statement AM claimed to have been living with the appellant since January 2019 (this was however inconsistent with his answers in his asylum interview), that they were in a serious relationship, that she has been living in the UK since 2014 and worked as a nursery school teacher, and that she was well-integrated. She claimed to have medical conditions, mostly related to her allergies, and to use an epi pen to combat insect bites. She claimed she could not accompany the appellant to India because of her condition, and that she would not be able to bear the heat or adjust to the food.
12. In his oral evidence the appellant claimed to have arrived in the UK in 1998 and to have resided in the UK continuously since that time. When he first entered the UK he lived in Leicester for a few weeks, then moved to Birmingham for about a year. He also mentioned living in Coventry. The appellant was taken through the various statements and letters described above and confirmed the assertions in them. His cousin had sufficient financial resources and suggested the appellant make a residence application. The cousin had been financially supporting the appellant. The appellant claimed AM now had settled status and that they were living together. When asked why none of the people who gave statements attended the hearing to give evidence the appellant claimed he had not been told to about this and suggested that the Tribunal could contact the individuals directly.
13. In cross-examination the appellant confirmed that he had been aware that the respondent disputed his claim to have lived in the UK for a continuous period of at least 20 years and he had been informed of the need to produce evidence to support his assertion. Some of the people were aware of the hearing but most were working. When asked why there was no independent evidence of his to have resided in the UK for the 14 year period from 1998 to 2012 the appellant said some people's phone number had changed and he did not know where other people were. The appellant said he began living with his cousin in 2008. The appellant agreed that his cousin made any asylum application when the appellant was living with him. The appellant claimed he did not have the financial resources to make an asylum application when his cousin made his asylum application. When told that it did not cost money to make an asylum claim the appellant said he went to a solicitor but the solicitor asked for fees.

14. In submissions Mr Clarke invited me to draw an adverse inference from the failure of any of the people who wrote statements and letters to attend the hearing, and from the absence of any independent evidence of the appellant's residence in the UK from 1998 to 2012. The appellant's claim that he could not claim asylum because of the cost was not consistent with his earlier explanation and was inconsistent with the absence of any fee to make an asylum claim and the availability of legal aid. Mr Singh invited me to find the appellant a credible witness and to attach weight to the letters and statement in support of his claimed residence. Mr Singh accepted there was an inconsistency between the appellant's claim to have known Mr G since 2003 and Mr G's claim to have known him since 2000, but that this was minor. Mr Singh asserted that AM had settled status and that there were compelling circumstances why the couple could not relocate to India.
15. I reserved my decision.

Findings/conclusion

16. Paragraph 276ADE(1) states:

The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that 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. 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) is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK

17. The appellant contends that he has lived continuously in the UK for at least 20 years and that he meets the requirements of paragraph 276ADE(1)(iii). Mr Singh invites me to find the appellant is a credible witness and to attach weight

to the appellant's assertion relating to his length of residence, as supported by the statements and letters adduced on his behalf.

18. I have concerns with the appellant's credibility. I note that the respondent did not find the appellant's asylum claim credible based on inconsistencies in his account. Judge Paul did not make any specific finding in respect of these inconsistencies and found the appellant's asylum claim, by its "historic nature", to be "barely credible", although the judge then approached the claim at its highest. I note also that Judge Paul found section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 relevant in respect of the appellant's delay in making his asylum claim. However, given the absence of any clear findings by Judge Paul in respect of the appellant's actual account of his asylum claim, I do not consider it appropriate to make any adverse credibility based on inconsistencies arising from the account.
19. In his statement of 22 January 2020, the appellant claimed to have been "totally unaware of the fact that an individual can make an asylum application at any time based on the fact they fear serious harm or threat." The appellant's explanation for his failure to claim asylum until 2019 was therefore attributed to his ignorance of the ability to make an asylum claim. This was not however the explanation given by the appellant at the hearing before me. He claimed he had not lodged an asylum claim because of the cost. Moreover, the appellant admitted that his cousin made an asylum claim when they were living together. The appellant could not therefore have been unaware that he could claim asylum if someone with whom he lived was making an asylum claim. I additionally note that the appellant made human rights applications in 2012 and 2014. It is simply not credible that he would not have been aware that he could have claimed asylum if he had the wherewithal to have two separate human rights claims. Whilst I take into account his claim to have previously approached a firm of solicitors for the purpose of claiming asylum there is no evidence to support this claim other than the appellant's own word.
20. I have further concerns with the credibility of the appellant's claim to have resided in the UK since 1998 based on the absence of any independent evidence in support of his claim. There is of course no need for the appellant to provide 'official' documents, and I would not have expected 'official' documents from someone who has lived 'under the radar'. The entire absence of any independent informal evidence of his residence is however surprising, particular given the length of his claimed residence prior to making his first application to the Home Office (14 years).
21. I have carefully considered the various letters and statements in support of the appellant's claimed long residence. The assertions in these letters relating to how long the authors have known the appellant are generally vague and lacking in detail. Few if any explanations are given as to why the authors are sure that they met the appellant in the years claimed. This could have been

explored if those who wrote the statements and letters had been called to give evidence at the hearing. This however did not occur. The unparticularised assertions relating to when the authors met the appellant remain untested. No satisfactory explanation was provided by the appellant as to why the authors of the letters and statements did not attend the hearing through remote means to give evidence. Whilst he claimed some were working, there was no further evidence from these individuals corroborating this claim or explaining why they were unable to take a short of amount of time off work in order to give evidence.

22. For the reasons given above I am not persuaded that the appellant has discharged the burden of proving that he has lived in the UK for a continuous period of at least 20 years.
23. Although the appellant has not expressly relied on paragraph 276ADE(1)(vi), I have nevertheless considered whether he meets the requirements of this paragraph. In his asylum interview (questions 15 to 22) the appellant stated that his father and brother continue to live in India, as do extended family members, and that he had regular contact with his father and brother. There was no evidence adduced at the hearing to undermine the continuing validity of his answers. The appellant therefore has a network of support upon whom he could rely in re-integrating into Indian society. Even if there is no network of support, the appellant is a healthy man who, even on his own (rejected) account of his length of residence in the UK, would have lived in India for the formative years of his life and would have entered the UK as an adult. There is no reasonable basis for believing that he would have any language issues on return to India, or that he would have lost his familiarity with the culture and customs. There is nothing preventing him obtain employment as an Indian national.
24. In respect of my assessment of the appellant's Article 8 claim outside the immigration rules, I note that he has produced no new evidence of the nature and extent of the private life he has established in the UK. For the reasons I have already given I can only attached limited weight to the untested assertions contained in the letters and statements contained in the respondent's bundle, and I cannot be satisfied that the appellant has been in the UK prior to October 2012. I take account of the claimed close relationships established by the appellant with the individuals who wrote the letters and statements, but no elements of dependency or reliance have been disclosed in respect of any of the relationships, and the appellant would be able to maintain contact with his friends and his cousin through remote forms of communication or periodic visits by those individuals to India. There is no adequate evidence that the appellant's daily social and cultural experience and expectations have been moulded by his residence to such an extent that removing him would constitute a disproportionate interference with the private life relationships he has established in this country.

25. Despite the grounds of appeal to the Upper Tribunal raising no issue with Judge Paul's assessment of the appellant's claimed relationship with AM, I have nevertheless considered the evidence relating to that relationship. Despite the respondent taking issue with the genuineness of the appellant's relationship with AM, and his failure to demonstrate that they were cohabiting, the appellant still only relies on a statement from AM dated 27 November 2019, and an unsigned statement in his First-tier Tribunal bundle. AM was not called as a witness and her evidence remains untested. Although his First-tier Tribunal bundle contains a copy of her registration certificate and passport, there is still no independent or reliable evidence of any cohabitation. I am not satisfied that the appellant and AM are living together. Mr Singh claimed that AM now had ILR (presumably under the Settlement Scheme) but no evidence was provided in support of this claim. Given that the appellant's answers in his asylum interview were to the effect that they only started to cohabit in September 2019, even taking his claim at its highest, they have not been cohabiting for the requisite two year period and she cannot meet the definition of partner in Appendix FM.
26. Even if the appellant was in a relationship with AM, and even if she now had settled status, the appellant has not produced any evidence even remotely capable of demonstrating either the existence of insurmountable obstacles to the couple relocating to India (applying EX.1 and EX.2), or, alternatively, that the refusal of his human rights claim would result in unjustifiably harsh consequences such as to constitute a disproportionate interference with their Article 8 rights.
27. Judge Paul noted the absence of any medical evidence supporting the assertion that AM had allergies or other medical conditions that prevented her from living in India and considered such assertions to be without substance. The appellant has still not produced any medical or other reliable and independent evidence in support of this assertion. Although AM's statement claims she is a nursery teacher and was well integrated in the UK, no reliable and independent evidence has been provided in support of these claims. There is a considerable paucity of evidence in respect of the appellant's relationship with AM and his claim that it would constitute a disproportionate interference with Article 8 to expect her to relocate to India. Moreover, any such relationship was established when the appellant was present without lawful leave and, pursuant to s.117B(4)(b) of the Nationality, Immigration and Asylum Act 2002, even if AM was a 'qualifying partner' little weight would be accorded to the relationship.
28. For all these reasons I find that the appellant has not demonstrated that he has lived continuously in the UK for at least 20 years and that the refusal of his human rights claim is not unlawful under s.6 of the Human Rights Act 1998.

Notice of Decision

The appellant's human rights claim is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant in this appeal is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his 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.

D. Blum

14 March 2021

Signed

Date

Upper Tribunal Judge Blum