IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Ce-File Number: UI-2021-001926
First-tier Tribunal No: HU/50823/2020
IA/02056/2020

THE IMMIGRATION ACTS

Decision and Reasons Issued:
On the 19 April 2023

Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE MALIK KC

Between

RANJIT SINGH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE
FOR THE HOME DEPARTMENT

Respondent

Representation
For the Appellant: Mr Azhar Chohan, VKM Solicitors
For the Respondent: Mr Esen Tufan, Senior Presenting Officer

Heard at Field House on 31 January 2023

DECISION AND REASONS

Introduction

1. This is an appeal from the decision of First-tier Tribunal Judge Veloso ("the Judge") promulgated on 18 October 2021. By that decision, the Judge dismissed the Appellant's appeal from the Secretary of State's decision to refuse his human rights claim made in an application for leave to remain in the United Kingdom.

Factual background

2. The Appellant is a citizen of India and was born on 10 June 1983.

3. The Appellant claims to have entered the United Kingdom illegally on 14 December 1999. He made an application for leave to remain on 6 November 2018 on the basis of his private and family life. The Secretary of State refused that application on 31 January 2019 and certified the human rights claim as clearly unfounded under section 94 of the Nationality, Immigration and Asylum Act 2002. He made further submissions to the Secretary of State on 14 March 2019. The Secretary of State rejected those submissions and refused to treat them as a fresh claim on 21 March 2019. He made an application for leave to remain on the grounds of his private life on 11 February 2020. The Secretary of State treated the human rights claim made in that application as a fresh claim and refused it, with a right of appeal, on 3 November 2020.

4. The Appellant's appeal from the Secretary of State's decision was heard by the Judge on 12 August 2021. The primary issue of fact before the Judge was whether the Appellant has been continuously resident in the United Kingdom for more than 20 years for the purpose of Paragraph 276ADE(1)(iii) of the Immigration Rules. The Appellant was legally represented and argued that he has been continuously resident in the United Kingdom since his arrival on 14 December 1999. He gave oral evidence with assistance of a Punjabi interpreter and called three other witnesses.

5. The Judge found the Appellant's evidence to be muddled and inconsistent. The Judge took the view that his other witnesses were not credible. The evidence before the Judge included witness statements made by Mr Kuldeep Singh Kooner and Mr Kuldeep Singh Saini. They, however, were not called to give oral evidence and the Judge attached little weight to the written evidence. The evidence before the Judge indicated that the Appellant was convicted for drink driving in the United Kingdom in September 2006. The Judge, after considering all the evidence, held that the Appellant has been in the United Kingdom from around September 2006 and rejected the claim as to the residence of over 20 years. The Judge further held that there were no very significant obstacles to his integration into India for the purpose of Paragraph 276ADE(1)(vi) of the Immigration Rules and that his removal would not be incompatible with Article 8. The Judge, accordingly, dismissed the appeal by a decision promulgated on 18 October 2021.

6. The Appellant was granted permission to appeal from the Judge's decision on 14 January 2022.

Grounds of appeal

7. The Appellant pleaded three grounds of appeal in relation to the Judge's findings as to the period prior to September 2006.

8. The first ground is that the Judge should have issued witness summons requiring the presence of Mr Kooner and Mr Saini.

9. The second ground is that the confusion in the evidence may have been because of an interpretation issue and the Judge should have intervened to check if the witnesses and the interpreter understood each other.

10. The third ground is that the evidence as to the Appellant's conviction showed that he was in the United Kingdom prior to September 2006.

Submissions

11. We are grateful to Mr Chohan, who appeared for the Appellant, and Mr Tufan, who appeared for the Secretary of State, for their assistance and able submissions.

12. Mr Chohan made the same submissions as in the grounds of appeal challenging the Judge's findings relating to Paragraph 276ADE(1)(iii) of the Immigration Rules. He advanced no challenge as to the Judge's findings relating to Paragraph 276ADE(1)(vi) of the Immigration Rules or Article 8 generally. He invited us to allow the appeal and set aside the Judge's decision.

13. Mr Tufan submitted that there was no error of law in the Judge's decision. He invited us to dismiss the appeal and uphold the Judge's decision.

Discussion

Ground (1)

14. Mr Chohan submitted that the Judge should have issued witness summons requiring the presence of Mr Kooner and Mr Saini. The short answer to this submission is that the Judge was under no obligation to issue a witness summons. The burden of proof was on the Appellant. It was a matter for Mr Chohan whether to call any witnesses in order to establish the contested fact of 20 years continuous residence in the United Kingdom. Mr Chohan, as noted above, called the Appellant and three other witnesses to give oral evidence. It was Mr Chohan's decision not to call Mr Kooner and Mr Saini for oral evidence.

15. If, for some good reason, Mr Kooner and Mr Saini were not available to give oral evidence on the day of the hearing, it was open to Mr Chohan to apply for adjournment, or raise the issue with the Judge at the outset. In fact, as the Judge noted at paragraph 4, Mr Chohan confirmed at the outset of the hearing that there were no preliminary issues. The Judge, at paragraph 35, noted that no explanation was provided for their lack of attendance other than the fact that they could not attend. Mr Chohan, as the Judge observed at paragraph 36, made no request for adjournment in order for them to be able to attend the hearing and, moreover, no evidence was provided for the failure to attend on the day.

16. Under Rule 15 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, the First-tier Tribunal may require attendance of a person as a witness on an application or on its own initiative. The Appellant was legally represented throughout these proceeding and it was open to him to apply for summons ahead of the hearing. No such application was ever made. Mr Chohan, likewise, made no request for a summons at the appeal hearing. In the circumstances, the Judge made no error of law in proceeding with the appeal hearing and deciding it on the evidence before her instead of issuing a summons. In our judgment, the approach adopted by the Judge was entirely fair and in accordance with the overriding objective.

17. It is also suggested, as part of this ground, that the Judge overlooked Mr Saini's written evidence. It is, however, tolerably clear that the Judge considered all the evidence carefully, including witness statement made by Mr Saini. The Judge, at paragraph 32, expressly referred to the witness statements made by the individuals who did not attend the hearing. The Judge, at paragraph 42, decided to attach very little weight in the round to the witness statements of persons who did not attend the hearing to face cross-examination. This obviously included not only Mr Kooner but also Mr Saini. The Judge, at paragraph 43, made her ultimate finding after considering all the evidence in the round. The Judge was entitled to attach very little weight to the witness statements of Mr Kooner and Mr Saini. The Judge's analysis of the evidence and reasons disclose no error of law.

Ground (2)

18. Mr Chohan submitted that the confusion in the evidence may have been because of an interpretation issue and the Judge should have intervened to check if the witnesses and the interpreter understood each other. This appears to be a complaint about the interpreter. The immediate difficulty with this submission is that it has no evidential foundation. Mr Chohan does not identify parts of the evidence that, in his submission, was not properly interpreted. There is simply no evidence of any difficulties as to the interpretation at the hearing before the Judge. Mr Chohan does not challenge the competence of the Tribunal-appointed interpreter that was present at the hearing. He referred us to paragraph 31 of the Judge's decision. In that paragraph, the Judge considered the oral evidence given by one of the witnesses under cross-examination and found it to be inconsistent with the Appellant's evidence. There is no hint of any confusion or misunderstanding as to the interpretation.

19. Mr Chohan confirmed that he raised no complaint before the Judge as to the interpreter. We attach weight to the Judge's own assessment of whether the interpreter and the witnesses understood each other. There was no obligation on the Judge to intervene and question at intervals if the interpreter and the witnesses understood each other. Even if the representatives do not do so, a judge should act on their own initiative, if satisfied that an issue concerning interpretation needs to be addressed.

We are satisfied that in this case no issue concerning interpretation needed to be addressed by Judge during oral evidence.

Ground (3)

20. Mr Chohan submitted that the evidence as to the Appellant's conviction showed that he was in the United Kingdom prior to September 2006. As the Judge noted at paragraph 19, the Secretary of State's review indicated that the conviction was in September 2006. The Appellant did not contest that either in his witness statement or in oral evidence and, moreover, Mr Chohan did not seek to argue a different date in his submissions made to the Judge. The Judge recorded that at paragraph 20 and proceeded on the basis that the Appellant's conviction was in September 2006.

21. It was observed when permission to appeal was granted that the documents in the Secretary of State's bundle showed that the Appellant's first conviction was in 2005. Mr Chohan, however, confirmed that there was no such documentation in the Secretary of State's bundle.

22. The pleaded grounds of appeal asserted that "the Appellant's wrap sheet indicates longer residence". We asked Mr Chohan to clarify what was meant by the "wrap sheet" and to take us to it. In response, he took us to the Secretary of State's earlier decision made on 31 January 2019. In that decision, the Secretary of State had stated that the Appellant's earliest conviction was on 2 November 2005. This provides no assistance at all to the Appellant as, in order to qualify for leave to remain under Paragraph 276ADE(1)(iii) of the Immigration Rules, he was required to show continuous residence in the United Kingdom from 11 February 2000 to 11 February 2020, which was the date of his latest application. For the detailed reasons given by the Judge, she was entitled to find that the Appellant has not continuously resided in the United Kingdom for more than 20 years.

Conclusion

23. For all these reasons, we find that the Judge made no error on a point of law in making her decision. We therefore uphold the Judge's decision and dismiss this appeal.

Notice of decision

24. The appeal is dismissed.

Anonymity

25. In our judgment, having regard to the Presidential Guidance Note No 2 of 2022, *Anonymity Orders and Hearing in Private*, and the overriding objective, an anonymity order is not justified in the circumstances of this

case. We therefore make no order under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Zane Malik KC
Deputy Judge of Upper Tribunal
Immigration and Asylum Chamber

Date: 14 February 2023