IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Extempore Decision

Case No: UI-2023-002852

First-tier Tribunal Nos:
HU/58663/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

5th October 2023

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

ABDUL QADIR MOHAMMED
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms P Solanki, instructed by Worldwide Solicitors Ltd
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 15 September 2023

DECISION AND REASONS

Introduction

1. At the outset of the hearing Ms Everett, on behalf of the respondent, conceded that the decision of the First-tier Tribunal contains an error of law such that it must be set aside. Following this concession, Ms Solanki and Ms Everett made submissions with respect to the re-making of the decision. For the reasons set out below I have re-made the decision in the appellant's favour and allowed the appeal.

2. The appellant is a citizen of India who claims to have lived continuously in the UK since entering as a visitor in 2001. If this is the case, he satisfies the twenty years' continuous residence route to leave, which at the time of his application was in paragraph 276ADE(1)(iii) of the Immigration Rules.

3. The respondent's case, as set out in the refusal decision of 1 November 2022, is that there was insufficient evidence to show residence for twenty years.

4. The appellant appealed against this decision and the appeal came before Judge of the First-tier Tribunal Raymond. In a decision dated 8 June 2023 Judge Raymond dismissed the appeal. Judge Raymond accepted that the appellant had established, primarily through medical records, his presence in the UK since 2012. However, he found that there was insufficient evidence to establish his presence in the UK between 2001 and 2012.

The errors of law conceded by the respondent

5. The first error accepted by Ms Everett is that Judge Raymond failed to take into consideration that in 2014 the respondent made a decision refusing a human rights application by the appellant where the following was stated:

> "You last entered the UK in September 2001. Having spent 30 years residing in your home country prior to coming to the UK ... As such, having chosen to overstay since early 2002 ... As you were capable of making the transition to the UK on your own after spending 30 years in India and so can be expected to do likewise now **having only spent 12 years here**". (Emphasis added)

6. The second error is that the judge made several adverse findings without these having been raised by the respondent or put to the appellant. Ms Everrett accepted the appellant's argument that this was procedurally unfair.

Re-made decision

7. Judge Raymond's finding that the appellant has been in the UK since 2012 is not disputed and is preserved.

8. The issue to determine is whether the appellant, as he claims, has been in the UK between 2001 and 2012.

9. In my view there is strong evidence supporting this.

   (a) First, the respondent made a decision in 2014 where she stated in clear terms that the appellant has been in the UK since 2001.

   (b) Second, in the refusal decision of 1 November 2022, the immigration history given by the respondent states that the appellant made an unsuccessful application for leave in 2009.

10. Considering these two documents together, I consider it more likely than not that the appellant has been in the UK since he entered as a visitor in 2001. This means that he satisfies the conditions of paragraph 276ADE(1)(iii) because he has lived in the UK for more than twenty years. No suitability or other reason has been identified as to why the appellant should not succeed if the required length of residence is established.

11. As the appellant meets the requirements of the Immigration Rules, the public interest in the importance of maintaining immigration controls does not weigh against him in the Article 8 ECHR proportionality balancing exercise. See *OA and Others (human rights; 'new matter'; s.120) Nigeria* [2019] UKUT 65 (IAC) and *TZ (Pakistan) and PG (India) v The Secretary of State for the Home Department*

[2018] EWCA Civ 1109 (17 May 2018). Accordingly, the appellant's appeal is allowed on the basis that removal would be disproportionate under - and would breach - Article 8 ECHR.

Notice of Decision

12. The decision of the First-tier Tribunal is set aside. I re-make the case by allowing the appeal.

D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

2.10.2023