



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004581

First-tier Tribunal No: HU/54316/2022
IA/06985/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 24 December 2023**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**JASWINDER SINGH
(ANONYMITY ORDER NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. N. Ahmed, Counsel instructed by Ishwar Solicitors
For the Respondent: Mr. P. Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 5 December 2023

DECISION AND REASONS

1. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Groom, (the "Judge"), dated 13 September 2023, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse his human rights claim. The Appellant is a national of India who applied for leave to remain in the United Kingdom on the basis of 20 years continuous residence.
2. Permission to appeal was granted by First-tier Tribunal Judge Cox in a decision dated 13 October 2023. The grant was limited to ground (ii) only.

"2. Most of the grounds amount to no more than a disagreement with findings of fact that were open to the judge. In particular, it was open to the judge to

- find that the difference between the Appellant and Mr Kang's evidence as to when they first met was a 'significant discrepancy' (22) and find that [were] significant gaps in time when Mr Kang did not see the Appellant (26).
- attach little weight to Mr Sodhu's evidence, given the differing accounts as to where he met the Appellant and that Mr Sodhu did not attend the hearing.
- find that Mr Singh's letter does not assist the Appellant, given that Mr Singh had only known the Appellant for 5 years.

3. On the other hand, the judge does appear to have failed to consider the evidence recorded within the HO minutes. In particular, the minutes record:

"CMAT have reviewed the record against API, CRS and found no departures."

4. This is arguably an error of law. However, the error may not be material, as the judge found the Appellant to be lacking in credibility and the grounds have not explicitly challenged that finding.

5. I also note that it is unclear whether the judge was referred to this piece of evidence.

6. Permission to appeal is granted in respect of ground (ii) only."

3. There was no application to the Upper Tribunal to renew the grounds of appeal. Permission to appeal is therefore limited as set out in the decision of Judge Cox.
4. There was no Rule 24 response.

The hearing

5. The Appellant attended the hearing.
6. I heard submissions from both representatives following which I reserved my decision.

Error of law

7. Under the heading "Failure to take into account material evidence of Appellant's lawful entry and evidence of his Indian Passports / Appellant's claim to have remained in UK unlawfully / Evidence of no departures from UK since arrival", (ii) of the grounds of appeal states:

"The FTTJ has further erred in failing to take into proper consideration the evidence of appellant that he had never departed the UK since his arrival in UK on 06.03.01. This aspect of appellant's claim was supported by the checks of the Home Office. This evidence is recorded within the HO minutes within the Subject Access Documents which appear at PDF page 89/336 of the FTT stitched Bundle where the minutes record as follows:

"CMAT have reviewed the record against API, CRS and found no departures."

The evidence of "no departures" was material evidence that went in support of the appellant's claim to have resided in the UK continuously since 06.03.01 and

therefore to have resided in the UK for a continuous period of 20 years under the provisions of Paragraph 276ADE(1)(iii) of the Rules.”

8. Mr. Ahmed submitted that the grounds as a whole were a challenge to the Judge’s credibility findings and stated that he was “concerned” at how the grant had been framed. However, as set out in Judge Cox’s decision, and as submitted by Mr. Lawson at the hearing, the grounds do not challenge the Judge’s finding that the Appellant was lacking in credibility. The Judge states at [32]:

“Considering the Appellant’s evidence as a whole, I find that the Appellant is not a credible witness. There are a number of inconsistencies in his evidence and in particular, his evidence was vague as to where he was and who he was supposed to have lived with when he first arrived in the UK on 6 March 2001.”

There is no explicit challenge in the grounds to this finding at [32].

9. Secondly, the grant of permission to appeal is very clearly limited to ground (ii) and the Appellant did not renew his application for permission to appeal to the Upper Tribunal.
10. I therefore have very carefully considered the alleged failure to take into account this evidence against the background of an unchallenged finding that the Appellant was not a credible witness.
11. Mr. Ahmed submitted that the Judge should have taken all of the evidence contained in the stitched hearing bundle into account. This bundle amounted to 336 pages. The evidence set out at (ii) is contained in the Home Office Minute Sheet which is part of the Subject Access Request (“SAR”) submitted by the Appellant. Mr. Ahmed submitted that at [19] of the Judge’s decision he had referred to the Minute Sheet dated 31 December 2014. This was found at page 86 of the bundle. The evidence set out at (ii) was found only three pages later, at page 89. He submitted that the Judge should have factored this evidence in to his consideration. There was no evidence that the Appellant had travelled out of the United Kingdom and there was no reason for him to leave unlawfully. He had remained without regularising his status which explained his lack of documentation. It was a material error to fail to consider this evidence as it supported the Appellant’s credibility. It would have had a material impact on the way in which the Judge assessed the rest of the evidence of the witnesses and the Appellant. Further, the Judge had not made a finding as to what period he accepted that the Appellant had been in the United Kingdom.
12. Mr. Lawson submitted that there was no reference to this piece of evidence in the Skeleton Argument or the Appellant’s witness statement. There had been no challenge to the Judge’s finding that the Appellant was not a credible witness. The Judge had highlighted failings in the Appellant’s evidence throughout the decision, including contradictions between his evidence and that of the witnesses. It was for the Appellant to put forward his case, and if the Judge had not been referred to this specific evidence, it was not incumbent on him to trawl through the bundle to look for it. Further he stated that the Respondent did not accept that this evidence showed that the Appellant never left the United Kingdom as the Appellant could have left unlawfully.
13. Mr. Ahmed submitted in response that the whole purpose of the submitting the SAR was to provide a trail of the Home Office’s records, especially as there was a lack of other evidence. The evidence supported the Appellant’s claim to have

been in the United Kingdom. He submitted that the SAR had been “heavily relied on” to show that the Appellant had remained here. There was no dispute as to the accuracy of the Home Office minutes, and the evidence should have been considered.

14. The evidence set out at (ii) consists of one line halfway down a page taken from the Respondent’s records. It is found at page 89 of the stitched hearing bundle. The complete SAR evidence goes from page 82 to page 116. The sentence appears as the fourth line down in a box of text as follows:

“Notes / Events

Created by User: Unit: RP MRP Created on: 25-May 2017

***** RESTRICTED & NOT FOR DISCLOSURE *****

CMAT No Contact Rewash.

CMAT have reviewed the record against API, CRS and found no departures. Trace checks against Experian and DART have provided no recent address.

Case remains 'No Contact' to be reviewed again in 6 months time as per current agreed Rewash process.

***** RESTRICTED & NOT FOR DISCLOSURE *****”

15. I find that there is no reference to this evidence in the Skeleton Argument nor in the Appellant’s witness statement. I asked Mr. Ahmed to show where it had been referred to in either document, but he did not refer me to these documents. Mr. Ahmed said that he had relied heavily on the SAR evidence in submissions, but he did not state that he had referred the Judge to this particular sentence, nor ask that a transcript of his submissions from the hearing in the First-tier Tribunal be obtained. Had this evidence been so vital to the Appellant’s appeal before the First-tier Tribunal, I would expect it to have been referred to in the Skeleton Argument, or at least in submissions. At its highest Mr. Ahmed’s submissions before me were that the Judge had been referred to page 86, and this evidence was found only three pages later on page 89.

16. I have considered the case of Lata (FtT: principal controversial issues) [2023] UKUT 00163 (IAC). Paragraphs [1], [2] and [7] of the headnote state:

“1. The parties are under a duty to provide the First-tier Tribunal with relevant information as to the circumstances of the case, and this necessitates constructive engagement with the First-tier Tribunal to permit it to lawfully and properly exercise its role. The parties are therefore required to engage in the process of defining and narrowing the issues in dispute, being mindful of their obligations to the First-tier Tribunal.

2. Upon the parties engaging in filing and serving a focused Appeal Skeleton Argument and review, a judge sitting in the First-tier Tribunal can properly expect clarity as to the remaining issues between the parties by the date of the substantive hearing.

“7. Unless a point was one which was Robinson obvious, a judge's decision cannot be alleged to contain an error of law on the basis that a judge failed to take account of a point that was never raised for their consideration as an issue in an appeal. Such an approach would undermine the principles clearly laid out in the Procedure Rules.”

17. It was not raised as an issue in the Appellant’s Skeleton Argument that the evidence referred to in (ii) showed that the Appellant had never left the United Kingdom. It was not highlighted as a key piece of information which would

influence the Judge's assessment of the evidence in the way that it is argued now. Mr. Ahmed submitted before me that this evidence would have had "a material impact" on the way that the Judge assessed the rest of the evidence. However, as I have set out above, there was no challenge in the grounds of appeal to the credibility finding at [32], and no application to renew the grounds of appeal following the limited grant of permission.

18. There is no challenge to the credibility findings at [32]. As submitted by Mr. Lawson, the Appellant could have left the United Kingdom unlawfully. I find that this evidence does not confirm that the Appellant had never left the United Kingdom since his arrival. Mr. Ahmed submitted that he had no reason to leave the United Kingdom. However, the Judge did not find the Appellant to be a credible witness. Had he done so, he would have accepted that he had not left the United Kingdom for 20 years, but he did not accept the Appellant's evidence, or those of his witnesses.
19. Even had the Judge referred to the evidence referred to at (ii), I find that it would not have made a material difference given that it is not evidence that the Appellant has not left the United Kingdom at all as he could have left unlawfully. The Judge carefully considered the evidence from the Appellant and witnesses. The grounds asserted that he had erred in his approach to the evidence of the witnesses, but permission was not granted on that point, and the application was not renewed. The grounds did not assert that there was an error at [32] of the decision. Given therefore that the evidence does not show that the Appellant never left the United Kingdom, even if the Judge's failure to refer to it was an error of law, it is not material.
20. In relation to Mr. Ahmed's point about the absence of a finding as to how long the Appellant had been here, there was no challenge in the grounds of appeal to the fact that the Judge had not made such a finding. As was acknowledged at the hearing, the grant of permission to appeal was limited. The Judge found that the Appellant had not been continuously resident for 20 years, and so did not meet the requirements of paragraph 276ADE(1)(iii). That was the issue before him. He concluded in respect of this at [36]:

"However, taking the evidence in the round, I am not satisfied on balance, that the Appellant has demonstrated either on the basis of the documentary evidence produced or by his oral evidence and the evidence of Mr Kang, that he has lived continuously in the UK for at least 20 years. I do not find that the supporting letters from Mr Sodhi or Mr Singh to be independent or a relevant source of corroborative evidence either."

21. I find that the decision does not involve the making of a material error of law.

Notice of Decision

22. The appeal is dismissed.
23. The decision of the First-tier Tribunal does not involve the making of a material error of law and I do not set it aside.
24. The decision of the First-tier Tribunal stands.

**Kate
Chamberlain**

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
20 December 2023