IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001166

First-tier Tribunal No: HU/51061/2022
IA/01638/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 16 September 2024

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

RAJINDER RAM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: No attendance
For the Respondent: Ms S Rushforth, Senior Home Office Presenting Officer

Heard at Cardiff Civil Justice Centre on 22 August 2024

DECISION AND REASONS

1. The appellant is a citizen of India born on 22 May 1976. He claims to have arrived in the UK illegally by lorry on 26th June 2001 but was encountered by immigration officers on 18th June 20008 and claimed at that time that he entered the UK 2 to 3 months previously and gave his details as Rajinder Kumar with a date of birth of 25th October 1980. He was served with removal papers as an illegal entrant was issued with reporting instructions. On 16th May he submitted an application for Stateless Leave Consideration in the name of Rajinder Kumar with a date of birth of 25th October 1980. That application was refused on 3rd February 2020.

2. The appellant then applied on 24th January 2022 for leave to remain in the UK under the 10-year family and private life route in the name of Rajinder Ram with a date of birth of 22nd May 1976, this timed on the basis of 20 years residence and private life in the UK. That was refused on 3rd February 2022.

3. The respondent considered the documentation provided but noted that all of the medical evidence from May 2003 until 16th May 2019 was in the name of Rajinder Kumar, this time with a date of birth of 30th November 1977 and which listed him at the address of 165 Regent Street Kettering, NN16 8QH until 7th September 2016. However, checks made by Equifax conducted against his name and previous address did not show any record of anybody in the name of either Rajinder Kumar nor Rajinder Ram residing at that address during the relevant time. The respondent concluded that the documents did not confirm his residency in the UK.

4. The respondent accepted that the name of Rajinder Kumar born on 25th October 1980 had been matched to the appellant via his biometric information but considered that he had failed to evidence that he was also Rajinder Kumar born on 30th November 1977. The respondent concluded that the evidence provided did not corroborate his residency and the earliest evidenced date, in an identity which was confirmed to be the appellant's, was when he was encountered on 14th June 2008. It was thus not accepted that he had lived in the UK for 20 years and had not fulfilled the requirements of paragraph 276ADE(1)(iii) of the Immigration Rules that he had lived continuously in the UK for 20 years. Neither could he demonstrate very significant obstacles to integration in India in order to fulfil paragraph 276ADE(1)(vi). Additionally, there were no exceptional circumstances justifying a grant of leave on wider Article 8 grounds such that his removal from the UK would not be in breach of his human rights.

5. The appellant appealed and the matter came before First-tier Tribunal Judge Boyes on 9th September 2022. The appellant relied on an appeal bundle which included a witness statement from himself and Ms Riner Rani. She stated that the appellant had entered the UK in June 2001 and lived with her mother together with the mother's brother and mother a few houses away from herself and her husband and three children. The appellant would drop her children to school and pick them up and she considered him as her family member. He started working in July 2001 and, as far as she knew, he continued to do so until he left Kettering.

6. The judge allowed the appeal on the basis that Ms Rani's evidence was credible.

7. Judge Boyes found

> *"A. The appellant is thoroughly dishonest, not able to be trusted on anything that he claims and willing to lie and dissemble at any stage to achieve what he wants to achieve. He has even lied on what he claims is his own Son's birth certificate. It is not possible to stoop much lower and shows the measure of the reliability of his evidence and indeed him. He has used multiple names, multiple dates of birth, different NI Numbers and different NHS Numbers.*
>
> *B. His 'apology' for being in the UK for 20 years is nothing more than mocking the system. He is not sorry in the slightest.*
>
> *C. The appellant has been aided in his endeavours by dishonest family members. He explained that they paid other people to obtain, dishonestly, NI numbers and the like for him so that he could work. Paying a person to obtain a NI Number for another person they know is not entitled to one is, if not dishonest, thoroughly amoral. This enabled him to remain in the UK as he was able to obtain work he was not entitled to undertake.*

D. The appellant is not capable of belief on any aspect of his claim in light of his character and behaviour."

8. When finding Ms Rani to be a credible witness Judge Boyes stated only that:

> *"There was nothing to suggest that she was not reliable or had participated in the deception or dishonesty. I am satisfied that her evidence and she herself is untainted by the dishonesty of the appellant and other family members."*

9. The Secretary of State sought permission to appeal to the Upper Tribunal and the matter came before UTJ Kebede. The appellant was represented by a specialist immigration solicitors and experienced counsel.

10. In her decision at the error of law stage Judge Kebede noted that the respondent appealed

> *'on the grounds that the judge's decision was devoid of any detailed reasoning, that he had failed to give reasons for accepting that Riner Rani's evidence was credible and untainted by the dishonesty of the appellant and other family members, that he had failed to provide adequate reasons for allowing the appeal and that the decision bordered on perversity.'*

11. Judge Kebede allowed the Secretary of State's appeal on the basis that the judge had failed to give adequate reasoning for accepting the evidence of the witness particularly in light of the adverse findings made about the appellant and the dishonesty of his other family members. Judge Kebede set aside the decision of Judge Boyes but preserved his findings from A to D at [7] above. There was no reason why Ms Rani was to be distinguished from the other family members and the judge seemed to have 'accepted the brief assertions she made on their face, on the sole basis that there was nothing to suggest that she was not a reliable witness'. That, Judge Kebede found, was not a sufficient basis on which to allow the appeal. there was no challenge to the adverse findings made by Judge Boyes at 7A to 7D.

12. The appeal was set down for a 'remaking' hearing in the Upper Tribunal and a direction issued that should the parties seek to rely on any further evidence not previously before the First-tier Tribunal that evidence should be filed and served no later than 7 days before the date of the resumed hearing.

13. On 9th July 2024 a notice of the hearing listed for 22nd August 2024 was sent to the parties, including the appellant and his representatives.

14. No further evidence was received by 15th August 2024. No solicitor was removed from the record. On 21st August the day before the hearing the appellant wrote, by email, to the Upper Tribunal in the following terms

> *'I am writing to inform the Tribunal that my previous legal representative, SMK Solicitors are no longer instructed in this matter. I have attached a form UTIAC16 confirming that I am now acting in person.*
>
> *I am now representing myself. I request the Tribunal for an adjournment of the hearing scheduled on 22 August 2024 as I am in the process of finding new representation. This sudden changed has caused me a lot of stress and I am therefore directly pleading to the Tribunal.*
>
> *I am not IT literate and pursuing this appeal myself would be impossible for me – just to send this email I have had to request my local grocery shop owner. In the interest of justice and to allow me to pursue my case with a fair chance, I request the Tribunal that I am given sufficient time to prepare.'*

15. That application was refused by email in the following terms at 12.53 hours on 21st August 2024

> *'The application by the appellant for an adjournment is refused. Notice of the hearing was given on 9th July 2024 some six weeks ago and the appellant has indicated the day before the hearing that his former solicitors are no longer instructed, he needs time to instruct further representatives and he cannot deal with electronic filing. He has not indicated the circumstances in which representatives are to be instructed, and has not indicated what further evidence to be relied upon if any despite the time elapsed since the notice of the hearing. In considering the overriding objective of The Tribunal Procedure (Upper Tribunal) Rules 2008 and fairness, it is not in the interests of justice to adjourn the hearing.'*

16. The matter listed for 10 am on 22nd August 2024, had not been adjourned and the appellant did not attend and no evidence was filed in accordance with the direction of UTJ Kebede. An interpreter which had been booked was present. The clerk was asked to make enquiries but confirmed no contact had been made by the appellant. I considered that the appellant had been given the date, time and venue, was aware the matter had not been adjourned (and notified electronically) and simply chose not to attend. After the hearing a message to the Tribunal timed from the appellant at 10.55 but transmitted at 12.12 hours stated

> *'I have been trying to arrange representation since 2 weeks. Due to summer holidays, I have not been able to book a barrister.'*

17. This is most surprising bearing in mind that the appellant confirmed only the day before the hearing that his previous experienced representatives and counsel were no longer instructed. Even if Ms Rushforth had no objected to an adjournment merely because of the absence of the appellant, I considered that it was fair in the circumstances and in the light of the overriding objective to proceed with the hearing. The appellant had ample time to contact the UT to advise he was trying to find representation and did not. He knew that the hearing had not been adjourned but chose only to contact the UT after the listed time for the hearing.

18. For the remaking, I have considered the entirety of the documentation provided by the parties and this included a skeleton argument submitted by the appellant's representatives to the FtT. The issues raised were whether the appellant met the requirements under paragraph 276ADE and whether the appellant's removal would breach his Article 8 protected rights.

19. I acknowledge that the respondent considered that the appellant has resided in the UK since 14th June 2008 when he was encountered but the respondent has not accepted and nor do I that he has resided here continuously since either 2001 or 2008.

20. Bearing in mind the preserved findings little weight can be attached to the appellant's own evidence including that of his witness statement.

21. Ms Rani is said to be 'the appellant's aunt's daughter' (a family member) and bearing in mind the brevity of her statement, the preserved finding of the appellant's family's dishonesty and that she has not accounted for the whole period from 2001 to 2008, I do not accept weight can be attached to her evidence. Indeed she did not attend before me (or apparently the FtT) and nor did any of the other individuals who submitted a statement or letter, to confirm the truth of the witness statement or written communication. Little weight is therefore given to their evidence. Ms Rani gave evidence that the appellant lived at 165 Regent Street, but the Equifax checks undertaken by the Home Office did not place the appellant in either name at that address. Additionally, I note she did not even live with the appellant. She also stated that 'he started working in July 2001 and as far as I know he continued working until he left Ketttering in 2015'. This is not confirmation that the appellant was in the UK continuously during the period from 2001 to 2015 (albeit the respondent accepts that he was encountered in the UK in 2008). Even though bank statements do not necessarily confirm an address, a Barclays bank statement produced by the appellant gives an address in Leicester in September 2012 which is nearly 30 miles from Kettering. That contradicts Ms Rani's evidence and I give no weight to her evidence in the light of the overall preserved findings and close analysis of the evidence overall.

22. The appellant's working records show him working with an NI number to which he was not entitled. The date of birth used in the name of Rajinder Kumar is not that of the date of birth given in his application. It is not demonstrated that these are one and the same. This may be the same name but the date of birth is different. The certificates provided do not demonstrate continuous residency because of the lack of clarity as to who secured those certificates.

23. The NI numbers in the evidence on the HMRC documentation varied; for example the NI numbers in the tax calculation 2007/8 and 2008/9 on the one hand and the P45s ie 2005 and 2007 on the other were different.

24. The medical records provided from 2003 to 2019 show the name of Rajinder Kumar with a date of birth, this time, of 30th November 1977 and differed from that of the appellant as given in the application. Nor do they confirm that he was continuously resident at the address given bearing in mind the checks undertaken. He states in his witness statement he has now amended this to 25th October 1980 - again not his date of birth on his passport. I consider these records thus to be unreliable as evidence of the appellant's residency in the UK.

25. Similarly the records of video/photographic evidence do little to demonstrate continuous residence.

26. The later evidence for 2017-2020 are in the name of Rajinder Kumar and show a date of birth of 25th October 1980. That again is not the date of birth given in the appellant's passport and application which is 1976.

27. The appellant has used multiple names, multiple dates of birth and different NI and dates of birth for NHS records.

28. As a consequence the evidence is wholly unreliable and the appellant has failed to demonstrate that he has fulfilled paragraph 276(1)(iii) that he has lived in the UK continuously for 20 years.

29. Not least on his evidence when he was encountered in 2008 he stated that he entered 2-3 months previously.

30. Nor has the appellant shown very significant obstacles to his return. Minimal detail was given in relation to his partner and child (one sentence in the skeleton argument before the FtT) and one sentence in his witness statement dated 9th April 2022. Further, it is submitted that neither have status to remain in the UK. The best interests of the child who would now be five years old are evidently to remain with his/her parents. there is no information of the partner's immigration status nor that the child is stateless despite this being raised in the Secretary of State's refusal decision.

31. In terms of very significant obstacles, SSHD v Kamara [2016] EWCA Civ 813 requires a broad evaluative assessment of possible reintegration. The appellant lived in India until at least the age, on his evidence, of 24 years but, still, there in no accepted evidence that he has lived continuously in the UK since that date. He will have retained knowledge of the life language and culture of India. He also has relatives in India and has not evidenced that he cannot work. Kaur v SSHD [2018] EWCA [57] confirms that bare assertions are just that and that more than mere practical difficulty is required._

32. Section 117B which sets out:

> *"(1) The maintenance of effective immigration controls is in the public interest.*
> *(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—*
> *(a) are less of a burden on taxpayers, and*
> *(b) are better able to integrate into society.*
> *(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—*

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to—

(a) a private life, or

(b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious."

33. The appellant has on his own evidence been in the UK unlawfully since entry. He has used the NHS and there is no indication that he is financially independent. At no point has he had legal status in the UK and there was essentially no evidence in relation to the partner or child. That said I note Section 117B (3) and (4).

34. The appellant cannot meet the immigration rules which sets out the position of the Secretary of State. His evidence is wholly unreliable. I find no unjustifiably harsh consequences to his removal have been demonstrated, Agyarko [2017] UKSC 11. Weighing the relevant factors which would include his family and friends in the UK, against the public interest, his removal is proportionate

Notice of Decision

The appellant's appeal is refused.

Helen Rimington

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12th September 2024