



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000094
First-tier Tribunal No:
HU/01463/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 12 March 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE WELSH

Between

MUHAMMAD SAEED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Raza of Counsel, instructed by Marks & Marks Solicitors
For the Respondent: Mr Walker, Senior Home Office Presenting Officer

Heard at Field House on 16 February 2024

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Freer ("the Judge"), promulgated on 15 February 2023. By that decision, the Judge dismissed the Appellant's appeal against the decision of the Secretary of State, dated 14 September 2022, to refuse his human rights claim.
2. At the error of law hearing, Mr Walker conceded that the decision contains material errors of law. I agreed with him and now set out my reasons.

Proceedings in the First-tier Tribunal

3. The Appellant is a national of Pakistan. His application for leave to remain was made under paragraph 276ADE(iii) of the Immigration Rules, on the ground that he has been continuously resident in the United Kingdom ("UK") for at least 20 years.

4. The Judge dismissed the appeal having found that “the Appellant has singularly failed to show continuous residence in the UK for 20 years or more. He has only shown credibly a presence here in 2001, 2005, 2006 ... and in 2022-23. This does not come close to satisfying the rule under which he claims. It is very possible that he has been abroad for some years and he has done nothing to dispel that impression. Even supposing he has been here every year, he has to prove each year of it with evidence of weight; and that is mostly lacking” [58].

The grounds of appeal and grant of permission

5. The grounds of appeal plead that:
- (1) the Judge failed to give adequate reasons for giving little weight to the evidence of one of the Appellant’s witnesses, Mr Malik (Ground 1);
 - (2) in assessing the credibility of the Appellant’s account, the Judge took into account an irrelevant factor, namely the use by the Appellant of an interpreter for the appeal proceedings (Ground 2);
 - (3) the Judge placing significant weight on the absence of photographs of the Appellant’s time in the UK renders the overall conclusion irrational (Ground 3);
 - (4) the Judge took into account an irrelevant consideration, namely the absence of official documents, such as tenancy agreements/household bills, in the Appellant’s name (Ground 4);
 - (5) the Judge misapplied the relevant paragraph of the Immigration Rules - if the Judge was satisfied that the Appellant had not left the UK, then the Appellant was not additionally required to adduce evidence of his presence in the UK for each of the 20 years (Ground 5).
6. Permission was granted by First-tier Tribunal Judge T Lawrence. The grounds upon which permission was granted were not restricted.

Discussion and conclusion

7. Mr Walker conceded, and I agree with him, that the Judge erred in that he:
- (1) took into account the fact that the Appellant used an interpreter at the appeal hearing as evidence undermining the Appellant’s claim about length of residence. The relevance of a person’s ability to communicate in English is capable of being probative of a claim to have resided continuously in the UK for 20 years but not without the Appellant being given an opportunity to explain why he had chosen to rely on an interpreter. The Appellant may well have had a plausible explanation but no enquiry was made of him (Ground 2);
 - (2) the Judge’s conclusion at [58] indicates that the Judge has approached the evidential question incorrectly. The assessment of the credibility of the Appellant’s account of being present for 20 years required a holistic assessment of the evidence not a mechanistic year by year approach. It may be that the Judge, in his drafting of this paragraph, has inadvertently created a false impression of how he has approached his assessment of the evidence but I cannot be sure of it (Ground 5).
 - (3) The Judge gave inadequate reasons for rejecting the evidence of one of the Appellant’s witnesses, Mr Malik. The reason given by the Judge was that the witness’s explanation for being certain about the year he first met the Appellant was not credible. While this is a valid reason, it does not explain why the Judge placed little, or in fact any, weight on the whole of this witness’s evidence (Ground 1).

8. One factor not conceded by Mr Walker, which in my judgment is an error, is the conclusion drawn by the Judge in relation to the lack of official documentation. At [46], the Judge noted the absence of evidence of household bills in the Appellant's name and concluded "these omissions give the impression of prolonged absence". Given the Appellant was in the UK unlawfully, reasons were required to explain why such a person could reasonably have been expected to have such documents in his name (Ground 4).
9. I am not satisfied that Ground 3 is made out. The Judge was entitled to take into account the absence of any documentation of the Appellant's presence in the UK in the form of photographs or other social media records. His description of this absent evidence as a "striking fact" does not indicate that this factor was given undue weight such that the decision is rendered irrational. There is nothing within the relevant paragraph [45] that suggests that this was anything other than one of a number of factors that the Judge took into account in assessing the Appellant's credibility.
10. A number of the factors identified by the Judge in his assessment of the evidence are plainly relevant and it was open to the Judge to conclude that these factors were adverse to the Appellant's case. I therefore consider the question of materiality carefully. However, given the nature and number of the errors identified, I cannot be satisfied that, but for these errors, the decision would have been the same. I therefore conclude that the decision contains material errors of law.

Notice of Decision

11. The decision of the First-tier Tribunal involved the making of a material error on a point of law and so I set aside the decision.
12. I remit this appeal to the First-tier Tribunal (not to be listed before Tribunal Judge Freer), to be heard de novo with no findings of fact preserved. In reaching this decision, I apply paragraph 7.2 of the Senior President's Practice Statement and the guidance in Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC).

C E Welsh
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 March 2024