IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2024-004457
UI-2024-004498
First-tier Tribunal Nos: HU/53132/2023
LH/05207/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 5th of February 2025

Before

UPPER TRIBUNAL JUDGE McWILLIAM
DEPUTY UPPER TRIBUNAL JUDGE LOKE

Between

Ilgar Rzali
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr M Fazli, Counsel, London Solicitors
For the Respondent: Mr J Thompson, Senior Home Office Presenting Officer

Heard at Field House on 5 December 2024

DECISION AND REASONS

1. The Appellant is a citizen of Azerbaijan. His date of birth is 17 March 1959.

2. There is no direction to anonymise the Appellant.

3. On 26 September 2024, the First-tier Tribunal (Judge G Cox) granted the Appellant permission to appeal against the decision of the First-tier Tribunal (Judge Abebrese) to dismiss his appeal against the decision of the Secretary of State for the Home Department (SSHD) to refuse his application for indefinite leave to remain (ILR) under Article 8 on private life grounds.

4. The grant of permission was limited to ground "A". The Appellant appealed on the remaining grounds to the Upper Tribunal. He was granted permission on all grounds by Upper Tribunal Loughran on 3 October 2024.

The Appeal to the First-tier Tribunal

5. The Appellant's case is that he has been in the UK continuously since 2004 for twenty years and therefore satisfies para 276ADE of the Immigration Rules (IR). He appealed against the decision of the SSHD under Article 8 of the ECHR on the basis of his private life.

6. The Appellant came to the UK in 2003. He made an application for asylum which was unsuccessful. He was removed and returned to Azerbaijan in 2003. He was granted a visa on 6 May 2004 and he legally entered the UK on 10 May 2004. To support that he entered the UK on 10 May 2004, the Appellant produced his passport which discloses that it was stamped by an Immigration Officer on that day. The passport also discloses a date stamp of 17 May 2004 by the authorities in Azerbaijan. The Appellant said that he did not re-enter Azerbaijan on that day. He said that the date stamp was put in his passport by an agent and does not support that he returned on 17 May 2004.

7. The SSHD does not accept that the Appellant has been in the UK continuously from 10 May 2004. They say that the date stamp of 17 May 2004 indicates that the Appellant returned to Azerbaijan on that day and that there was no evidence that he had re-entered the UK after his date.

8. The judge referred to the Appellant as "A" and the SSHD as "R". He set out the Appellant's evidence. He noted that he heard the evidence of Mr Awan, Mr Hajaef, Mr Shahin, Mr Omorov and a fourth witness who he does not name. There was another witness who the judge did not permit to give evidence because he had not filed and served a witness statement. The Appellant relied on photographic evidence and letters. The judge heard submissions from the representatives. The thrust of the Appellant's submissions were that he had not left the UK since 2004 and that there was evidence to support this, including the evidence of the witnesses.

9. The judge referred to the Appellant having provided evidence from friends and colleagues to establish that he had been in the UK continuously since 2004. The judge said that their evidence was that they have known the Appellant to be a person who has resided in the UK for "a substantial period of time".

10. The judge found that there were gaps in the Appellant's evidence. The judge said that he accepted the "evidence" of the SSHD. The judge found that there was no evidence following the stamp dated 17 May 2004 of the Appellant having re-entered the UK when he claimed. In relation to the evidence of photographs, the judge said that there was no clear evidence when these were taken and that the majority of them were not date stamped. The judge concluded at para 27 that the Appellant had not provided "credible" evidence to show that he has remained in the UK for a continuous period of twenty years.

The Appeal to the Upper Tribunal

11. Ground A: the judge gave wholly inadequate consideration to the assessment of the evidence of the six independent witnesses.

12. Ground B: there was a failure by the judge to put a material matter to the Appellant. This relates to the Appellant's explanation for the date stamp of 17 May 2004 and the finding of the judge that the Appellant had not explained the reason why the date was inserted by the agent.

13. Ground C: the judge failed to adequately consider relevant evidence. This relates to a letter from a firm of solicitors dated 4 September 2007 addressed to the Appellant. Mr Fazli expanded on this ground in submissions. He said that the judge did not take into account the letter from the London Azerbaijani community and the photographic evidence.

14. Ground D: the judge made an irrational finding that there is "no evidence following the stamp dated 17 May 2004 of the A having re-entered the UK and when he did re-enter". This is said to be perverse because it was clear that the Appellant had entered the UK and therefore must have re-entered.

Error of Law

15. We note that there is a sequencing problem with the decision of the judge. There are two paras numbered 26. We shall refer to the second para 26 as "para 26".

16. We have taken into account the very helpful submissions we heard from the representatives. We take into account what the Court of Appeal said in UT (Sri Lanka) [2019] EWCA Civ 1095 (see paras 19 and 20). We remind ourselves that we are not entitled to remake a decision of the First-tier Tribunal simply because we do not agree with it: AH (Sudan) v SSHD [2007] UKHL 49 as per Baroness Hale. We have considered the more recent case of Volpi v Volpi [2022] EWCA Civ 464 (see para 19) upon which Mr Thompson relied.

17. The evidence of the witnesses was potentially capable of supporting that the Appellant entered in 2004 and had continuously resided in the UK since then. While the judge said that he had taken into account all the evidence and submissions, including the evidence of the Appellant's friends and colleagues that he had resided in the UK for what the judge described a "substantial period of time", he did not explain what he made of the evidence. We are not satisfied that the judge adequately reasoned why he did not accept the evidence. He did not say that he found it unreliable or that it was not credible. The judge found that the Appellant was not credible and therefore the implication is that he found the witnesses not credible or that there evidence insufficient. We accept that the evidence of the witnesses was not entirely independent but it was evidence which could have supported the Appellant's case and it was incumbent on the judge to make findings in relation to it. We accept that the weight to attach to evidence is a matter for the judge however, any conclusion reached must be adequately reasoned. Having had regard to AK (Failure to assess witnesses' evidence) Turkey [2004] UKIAT 00230 we find that the judge materially erred. We therefore set aside the decision of the judge dismissing the Appellant's appeal.

18. It is not necessary for us to make findings in relation to the other grounds of appeal; however, bearing in mind we heard eloquent and helpful submissions from both parties on all grounds, we will briefly engage with them.

19. We do not accept that the judge did not take into account the Appellant's explanation for his passport showing a date stamp of 17 May 2004. Mr Fazli took us to the Appellant's witness statement where he explained that he had given his passport to an agent and it was given back to him with the date stamped. The Appellant's explanation was a more elaborate than that set out by the judge but the grounds do not support that the judge did not take into account the thrust of the Appellant's explanation that was the date stamp was the responsibility of an agent. In our view the evidence contained in the Appellant's witness statement does not take his explanation any further. We remind ourselves that the judge

did not need to set out each and every piece of evidence. We do not accept that it was incumbent on the judge to put the matter to the Appellant. The Appellant was represented and the date stamp was an anomaly in his evidence which called for an explanation. The Appellant gave an explanation in his witness statement and we are satisfied that the judge took this into account.

20. The judge gave reasons why he did not find the letter from the Appellant's solicitors reliable at para 26. The judge said that he accepted the "evidence" of the SSHD in respect of the unreliability of the letter and he noted that there was a second page of the letter missing. We interpret the judge's reference to "evidence" as meaning submissions. We find that the judge gave adequate reasons for not accepting the letter, namely that it was incomplete. We take into account that in the SSHD's second review, submissions were made therein relating to the letter and why, in their view, it was unreliable. It was permissible for the judge to rely on those submissions and reasons without having to set them out in full. In addition, it was rational for the judge to not attach weight to the letter as it was incomplete.

21. The grounds do not say that the judge conflated evidence with submissions with the possibility that he elevated the significance of the submissions made by the HOPO. There is no need for us to engage with this; however, we observe that he made this error twice at para 26.

22. The judge gave adequate reasons for rejecting the evidence of the photographs at para 26. The judge said that the majority of photographs are not date stamped. Bearing in mind the issue in this appeal, the reason given is rational. We accept that the judge did not specifically engage with the letter from the Azerbaijan Community Centre in his findings; however, he was clearly aware of it (see para 19). It was not incumbent on the judge to set out each and every piece of evidence.

23. The judge was cognisant that the Appellant had re-entered the UK at some stage. The point that the judge made is that there was no evidence that he had re-entered when he said he had.

24. Having set aside the decision, we heard submissions from the parties in relation to remaking. We agreed that there would need to be a rehearing bearing in mind that none of the findings can be maintained and that there will need to be a re-assessment of the evidence of the witnesses. Considering the case of AEB v the Secretary of State for the Home Department we agreed with the representatives that the case should be remitted to the First-tier Tribunal for a fresh rehearing. The Appellant did not have a fair hearing in so far as the evidence of his witnesses was not properly considered by the judge.

25. There is a material error. We remit the appeal to the First-tier Tribunal for a face to face rehearing (not before Judge Abebrese).

Joanna McWilliam

Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 December 2024