



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/34861/2013

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke
On 24th July 2014

Determination Promulgated
On 29th August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

LACHMANN DASS
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Sarwar of Counsel instructed by Bassi Solicitors
For the Respondent: Mr J Harrison, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. On 15th April 2014 Judge of the First-tier Tribunal Pooler gave permission to the appellant to appeal against the determination of Judge of the First-tier Tribunal Chohan in which he dismissed the appeal on immigration and human rights grounds against the decision of the respondent to refuse leave to remain on the basis of fourteen years' long residence in accordance with the provisions of paragraph

276B(i)(b) of the Immigration Rules. The respondent also refused the human rights claim applying the provisions of paragraphs 276ADE and Appendix FM of the Rules.

2. In granting permission Judge Pooler noted that the grounds of application submitted that the judge had erred in law by making an unlawful finding, misunderstood and misdirected himself in relation to the evidence and considered irrelevant matters.
3. The grounds themselves also pointed out that, in paragraph 18 of the determination, the judge had expressed the view that the appellant succeeded under paragraph 276B of the Immigration Rules yet also stated in the following paragraph that the appellant failed to meet the requirements of sub-paragraph (iv) of that Rule relating to a requirement for knowledge of the English Language and Life in the United Kingdom. That requirement was not an issue put before the Tribunal.
4. Judge Pooler considered that the grounds were arguable because the appellant had provided an English language test certificate with his application for leave to remain and the issue should have been raised by the judge at the hearing if he had concerns.
5. The respondent sent a response under Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in which it was accepted that the appellant had produced an English language certificate. However issue was taken with the conclusion in paragraph 17 of the determination that the appellant had been in the United Kingdom since 1995 when the judge had failed to give an adequate explanation for that finding despite having concluded that the appellant relied on inherently false documents and a witness who had not told the truth.
6. At the hearing before me Mr Sarwar argued that, as the appellant had proved that he had the necessary English Language and Knowledge qualification the determination should stand in relation to the judge's finding about fourteen years' continuous residence. He submitted that the judge had identified what evidence he could accept and what he could not and there was sufficient supporting evidence to entitle the judge to reach a favourable conclusion. He also indicated that witness evidence had been accepted by statement (paragraph 5 of the determination) and there was nothing to show that the Home Office wanted to cross-examine those witnesses.
7. Mr Harrison argued that the determination was both confused and muddled. At paragraph 14 the judge rejected letters from the appellant's employer and in paragraph 15 commented on other evidential defects including the absence of a video recording of the appellant's wedding. It was therefore difficult to see what the basis for the judge's favourable decision on residence was. Mr Harrison contended that a judge properly directed would not have made the decision reached.
8. Mr Sarwar concluded his submissions by pointing out that the judge relied upon recruitment letters and the bank letter which he regarded as "the most independent evidence".
9. After hearing submissions I announced that I was satisfied that the determination showed errors on points of law. Representatives both suggested to me that, as the errors related to the findings of fact, it would be necessary for there to be a fresh

hearing in the First-tier Tribunal. I now give my reasons for concluding that the determination shows errors on points of law such that it should be re-made.

10. The judge was certainly in error in raising the issue of the requirement for an English Language and Knowledge qualification when this had not been in issue and when, it is acknowledged, the appellant already had that qualification. That error might not be material if the positive credibility points about long residence can stand. However, when that error is seen in the light of the other errors which I now identify the determination cannot be seen as safe. The judge rejected much of the evidence put forward by the appellant to show fourteen years' residence. At paragraph 14 he identifies two letters from Prestige Recruitment Ltd as unreliable. He also appears to dismiss the evidence which he persuaded the appellant's representative could be submitted in statement form before declaring that the most independent evidence he had before him was that to show that the appellant opened an account with Nat West Bank in 2000. It is therefore difficult to see what the "totality of the evidence" was upon which the judge relied before reaching the conclusions set out in paragraph 17 that the appellant had been in the United Kingdom since 1995. These findings are perverse or irrational in the legal sense and the determination therefore cannot stand.

DIRECTIONS

1. The appeal is returned to the First-tier Tribunal for hearing afresh at the Stoke Hearing Centre.
2. The hearing is to take place as agreed with representatives on 17th September 2014 with a time estimate of two hours.
3. A Punjabi (Indian) interpreter will be required.
4. The appellant's representatives should submit a consolidated bundle of documents and evidence to be produced at the hearing.

Signed

Date

Deputy Upper Tribunal Judge Garratt