



**Upper Tribunal
(Immigration and Asylum Chamber)**

IA/49777/2013

Appeal Number

THE IMMIGRATION ACTS

Heard at Field House
On 10th June 2014
Prepared 10th June 2014

Determination Promulgated
On 25th June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

KULDIP SINGH
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms G Brown (counsel, instructed by Farani Javed Taylor solicitors)
For the Respondent: Mr E Tufan (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant arrived in the UK in May 1995 and on the 9th of May 1995 made a claim for asylum. The application was refused, the Refusal Letter was served with Notice IS.151A. The Appellant did not attend his appeal and the appeal was dismissed. The Appellant made further submissions in 2007 and July 2012 and on the 6th of July 2012 had made an application for ILR.
2. The appeal was heard by First-tier Tribunal Judge Walker at Hatton Cross on the 19th of March 2014. The appeal was dismissed for the reasons given in a determination dated the 21st of March 2014. The Appellant sought permission to appeal in grounds of application of the 2nd of April 2014. Permission was granted by First-tier Tribunal Judge Landes on the 6th of May 2014. The Secretary of State's response under rule 24 is dated the 21st of May 2014.
3. The Appellant's claim was that he had arrived in the UK in May 1995 and having made an asylum claim which was refused and the appeal dismissed had remained in the UK since then. Further representations had been made in 2001 and 2012 and an ILR application submitted on the 6th of July 2012. The application was refused on the basis that the Appellant did not have 10

years lawful residence, he had been served with form IS 151A in October 1996 and could not meet the requirements of the Immigration Rules as he had not lived in the UK for 20 years.

4. The Appellant's appeal was dismissed in a determination running to 43 paragraphs over 13 pages. At paragraph 5 the Judge set out the burden and standard of proof and stated that the Appellant had to show that he met the requirements of paragraph 276B, Appendix FM and paragraph 276ADE of the Immigration Rules, ECHR and article 8 considerations are at paragraphs 6 to 10. Having summarised the Refusal Letter, the Grounds of Appeal, the hearing, oral evidence and submissions the Judge's findings begin at paragraph 23.
5. The Appellant's evidence was analysed at paragraphs 25 and 26. He was described as vague and unconvincing and from the summary in the determination his evidence was lacking in detail, even when pressed. The evidence of Multan Singh was said to be equally vague, there were differences between their evidence and again a lack of detail. The evidence of Jaswinder Singh was found to be more credible.
6. The documentation was considered in paragraph 30 where it was found that the Appellant had been served with Notice IS 151A as claimed by the Home Office. The complaints he made about his previous representatives were rejected in paragraph 31. The GP's letter confirmed that the Appellant was registered from 1996 to 2012.
7. At findings on the Appellant's residence are set out at paragraph 33. In that paragraph the Judge stated "There has been no credible evidence of the Appellant's residence in the UK for the full period he has claimed. The only evidence that has any certainty is that he was in the UK during 1995 and 1996 and then also in 1998 when he was arrested. Since then the only subsequent and credible evidence has been that of Mr Jaswinder Singh who says he first met the Appellant in 2002 or 2003..."
8. Having rejected the Appellant's claim under the Immigration Rules the Judge went on to consider article 8. It was noted that the Appellant had no family in the UK and at paragraph 37 the Judge noted that his private life was limited insofar as the evidence provided was devoid of detail. The Judge noted the evidence of his life in the UK and the fact that he spoke with his friends in Punjabi and that his English was limited. Given the limited nature of his private life the Judge found that the Appellant's removal would not have the effect of engaging article 8.
9. Notwithstanding the finding in paragraph 38 that article 8 would not be engaged by his removal. In considering the proportionality of the Appellant's removal the Judge noted that the bulk of the Appellant's time in the UK was without leave and subject to removal directions. It was noted that the Appellant's 2 friends who had given evidence were from India and returned there for visits. Having received significant health treatment the Appellant's condition was not such that he could not be returned and there was no evidence to show he would not receive the treatment required in India.
10. The first ground of appeal is that the Judge erred in applying the wrong standard of proof. Despite the self-direction in paragraph 5 it is submitted that in paragraph 33 the Judge applied a higher and inappropriate standard. This is centred on the use of the word "certainty".
11. If that alone were the main analysis of the evidence provided there might have been some merit in the argument. However, the evidence from the Appellant and the witnesses was analysed in detail and at some length in paragraphs 25 to 31. There is no suggestion that the analysis in those paragraphs is flawed by an inappropriate approach to the facts or documentation. The evidence of the Appellant and Multan Singh was found to be vague and the quotes in paragraphs

26 and 27 and the summary in paragraph 28 bear that out, there is no suggestion that the quotes or summary are inaccurate.

12. The Appellant had had more than sufficient time to prepare the case and had had the advantage of legal assistance. The absence of details that might have been expected was clearly troubling for the Judge and the vagueness of the evidence from the only witnesses called was bound to influence the findings made.
13. Paragraph 33 is a summary of the findings made by the Judge based on the preceding analysis of the evidence that had been submitted and it has to be read in the context of the findings made. I read that paragraph as a finding that the Judge found that the Appellant had not discharged the burden of proof and had, therefore, not shown that he had been in the UK continuously as he had claimed.
14. That does not entail a positive finding that the Appellant was somewhere else, simply a finding that he had not shown that he was continuously in the UK. As the Judge had noted in paragraph 5 the burden of proof was on the Appellant and he had failed to discharge it. The use of the term "certainty" cannot sensibly be read as the Judge applying an inappropriate standard of proof and the determination read properly and overall displays no error in this regard.
15. Given the issue relating to the service of Notice IS151A the Appellant could not show more than about a year and half's qualifying residence under the Immigration Rules and so it was clear that the application under the Immigration Rules was bound to fail. Paragraph 33 shows that, at best, the evidence that discharged the burden of proof showed that the Appellant was in the UK in 1995 and 1996 and then in 2002/2003. For the purposes of article 8 it appears, although it is not expressed, that his presence is treated as being shown to be from 2002 onwards.
16. The second ground of appeal is that the Judge failed to make a lawful article 8 assessment. It is submitted that the Judge minimised the importance of the Appellant's private life assuming that his relationships within the Sikh community were transferable to India.
17. The evidence relating to the Appellant's private life in the UK was not impressive. As I have noted above the summary in paragraphs 26 to 28 is not challenged as being inaccurate. The first part of paragraph 26 is particularly unhelpful to the Appellant's case, as was paragraph 27, and it was noted that when pressed there was little detail forthcoming. The Judge cannot be criticised for not treating as significant evidence that was devoid of meaningful content.
18. The evidence, vague as it was, was to the effect that the Appellant has no family life in the UK and has a private life in the UK centred around the Temple but as the Judge noted at paragraph 37 the evidence was devoid of detail. The hearing was the Appellant's opportunity to provide evidence that would have justified a finding that his circumstances in the UK were such at although he did not meet the requirements of the Immigration Rules his removal would be unjustifiably harsh. There is no suggestion that the Judge's summary of the evidence was inaccurate and the evidence summarised shows that there was no basis on which such a finding could have been made.
19. At the hearing I raised whether there was any point to be taken there was any issue in relation to the Immigration Rules that ought to form the backdrop to the consideration of the Appellant's case. This would turn on whether the case of Edgehill or Halemudeen was correct. It was accepted that the service of the form IS151A on the Appellant, which had the effect of stopping the clock and so the Appellant could not meet the time required. The findings made that the

Appellant had not shown that he had been in the UK continuously were open to the Judge and were clearly relevant to the article 8 assessment made.

20. The Appellant has a poor immigration history followed by limited evidence of a private life. The Judge cannot be said to have erred in his approach to the length of time that the Appellant has been in the UK or in respect of the Appellant's life in the UK and the proportionality of his removal.

CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

In dismissing this appeal I make no fee award.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 24th June 2014