



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/09403/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Birmingham
On 14th November 2018**

**Decision & Reasons Promulgated
On 20th December 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR MUKHTIAR SINGH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss I Husain (Counsel)
For the Respondent: Miss H Aboni (Senior HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Moan, promulgated on 13th October 2017, following a hearing at Birmingham on 4th October 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of India, and was born on 17th March 1971. He appealed against the decision of the Respondent dated 17th

March 2016 refusing his application for leave to remain in the UK on the basis of his relationship with his partner.

The Appellant's Claim

3. The essence of the Appellant's claim is that he came to the UK illegally, as the family home in India was subject to a loan to purchase medication from his brother and father, but that he had done so as long ago as 1995, and had remained here ever since, a period now of twenty years' residency in this country. He had a relationship with a partner which is described as "on and off" because the partner had been married to someone else. The Respondent considered that this was not a relationship that amounted to a marriage for a period of two years and there were no bases upon that the Appellant could not be seen to be returning to India, and nor had the Appellant shown any exceptional reasons for a grant of leave to remain to be given to him.

The Judge's Findings

4. The judge considered the application on the basis of paragraph 276ADE, which was carefully set out in its entirety (at paragraph 23). The judge recorded the fact that it was not accepted that the Appellant had been in the UK since 1995 by the Respondent Secretary of State, but that having considered the evidence,

"I am satisfied that he entered the UK by October 1995 and it is highly unlikely given his status that the Appellant left the UK during that period [the period being between 1995 and 2000]. I find that he was present in the UK between 1995 and 2000 and therefore satisfied the twenty year residency conditions for a grant of discretionary limited leave. Discretionary leave it to be distinguished from indefinite leave. There are additional requirements for indefinite leave to remain on the basis of private life and other factors such as character and conduct would feature in that decision they can process" (paragraph 26).

5. The thereafter then considered the Appellant's family ties and relationships in the UK, especially with his sister, who he claimed to be in a close relationship with (paragraph 39).
6. The judge then went on to conclude that

"The Appellant would satisfy the criteria for a grant of limited leave under paragraph 276ADE(1)(iii) on the basis of twenty years in the UK albeit he is not entitled to such leave, he is simply eligible for that leave. The discretion remained with the Respondent and not with the Tribunal. He has been in the UK for a long time, and whilst he has not complied with immigration laws, he has also not offended or caused any difficulty for members of the public" (paragraph 47).

7. The Judge then turned to an analysis of factors which counted against the Appellant (paragraph 48), together with his full immigration history, and

the fact that he had not submitted another application until 2011, and when that was refused in 2012, he did not leave the UK. The judge concluded that there were no insurmountable obstacles to the Appellant returning to India (paragraph 49).

8. The appeal was dismissed.

Grounds of Application

9. The grounds of application state that, once it had been recognised, pursuant to paragraph 276ADE(1)(iii) that the Appellant had been in the UK for twenty years and satisfied the requirements of that provision, then the appeal ought to have been allowed, because there was no further requirement of his being “simply eligible for that leave” (paragraph 47). Second, it was stated that the judge erred by considering the application as this was an indefinite leave to remain application, (where the position would be that matters such as the Appellant’s character and conduct become relevant), which was not to be the case here. Third, it was said that the judge erred also in relation to Article 8 of the European Convention because given that the judge had found that because, in holding that the Appellant did not speak English to the standard required in the Immigration Rules (at paragraph 45), the judge had had regard to a requirement which did not feature in a consideration outside the Immigration Rules.
10. On 12th February 2018 permission to appeal was granted on the basis that, “it is arguable that the appeal should at least have been apparent to the extent that the Appellant had met the requirements under paragraph 276ADE(1)(ii) and (iii). It remained a matter for the Respondent whether limited leave to remain on the grounds of private life should be granted pursuant to Rule 276BE(1).

Submissions

11. At the hearing before me on 14th November 2018, Miss Husain, appearing on behalf of the Appellant, submitted that the issue before this Tribunal was a valid narrow one. This was that since the judge had recognised that the Appellant had been in the UK for twenty years, and that he “would satisfy the criteria” for the grant of limited leave to remain, on the basis of twenty years’ residence in this country, then the appeal should have been granted on this basis. There was no additional requirement of his being “simply eligible for that leave” (paragraph 47).
12. For her part, Miss Aboni submitted that the judge had concluded that the Appellant had not been in this country for twenty years at the time that he had made his application. He had simply said that the Appellant had been in this country for twenty years “by October 1995” (paragraph 26) but this did not bring him up to the twenty year period when his application was made. The judge therefore had to consider under paragraph 276ADE(vi) whether there would be “very significant obstacles to the applicant’s integration into the country to which he would have to go” (see paragraph 23) if he were to be returned to India.

13. In this respect, the judge found that, although the Appellant had been in the UK for twenty years, his dealings were such that he

“Has integrated himself into the local community and established himself within his sister’s household and assisted her, in the full knowledge that he may be required to leave at any time. I am satisfied that he provides some help within his sister’s household but not with personal care and I do not accept that the Appellant has been truthful about the circumstances in India or the involvement of his sister’s stepchildren. He is still very much dependent. There is little evidence that he is integrated outside the Sikh community” (paragraph 48).

14. Given that this was the case, Miss Aboni submitted that the judge had concluded that there would not be very significant obstacles to the Appellant returning to India although “he would find it challenging initially after a long absence” (paragraph 49). Therefore, the decision made by the judge was one that was entirely open to her.

Error of Law

15. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. There are two reasons for this. First, the judge recognised that the Appellant had been in the UK for twenty years. This is clear from paragraph 26 itself. Here the judge makes it clear that “I am satisfied that he entered the UK by October 1995”. This is a recognition that certainly by October 1995 the Appellant was in this country. It is not a statement that the Appellant’s presence in this country only began in October 1995. This is clear from the fact that the judge states in the same paragraph that she was “therefore satisfied the twenty year residency conditions for employment of discretionary limited leave” had been met. It was against this background that the judge came to the firm conclusion that “the Appellant would satisfy the criteria for the grant of limited leave under paragraph 276ADE(iii) on the basis of twenty years in the UK” (paragraph 47). In these circumstances, it was not open to the judge to also add the qualification that “he is not entitled to such leave, he simply [is] eligible for that leave” (paragraph 47). Plainly, if the Appellant complied with the Rules, he stood to succeed under the Rules. The appeal should have been allowed for the grant of limited leave on that basis.
16. Second, I am satisfied that the approach of the judge to the question of whether there would be “very significant obstacles to the Appellant returning to India” (paragraph 49) is flawed. This is because the judge takes the view that, although the Appellant has been in this country for twenty years and has “established himself within his sister’s household and assisted her,” and that she was satisfied “that he provides some help within his sister’s household” (paragraph 48) and that this was somewhat diluted by the fact that “there is little evidence that he has integrated outside the Sikh community”. There is no such requirement. Accordingly, an assessment of “very significant obstacles” should have been divorced

from this consideration. One must take the situation as one finds it. The situation with respect to this Appellant was that he was “a person who could establish himself within his sister’s household and assisted her” (paragraph 48).

Notice of Decision

17. The decision of the First-tier Tribunal involved the making of an error of law such that this falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed to the extent that the judge erred in stating that “the Appellant would satisfy the criteria for the grant of limited leave under paragraph 276ADE”, on the basis of twenty years in the UK, but that “he is not entitled to such leave, he simply [is] eligible for that leave” (paragraph 47). This is a case where the Appellant is plainly entitled to a grant of limited leave.
18. No anonymity direction is made.
19. This appeal is allowed.

Signed

Dated

Deputy Upper Tribunal Judge Juss

17th December 2018

**TO THE RESPONDENT
FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have decided to make a fee award of any fee which has been paid or may be payable.

Signed

Dated

Deputy Upper Tribunal Judge Juss

17th December 2018