



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/27146/2016

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice
On 9 July 2018

Decision & Reasons Promulgated
On 27 July 2018

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

SHAMIM AHMED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Basith, Taj Solicitors

For the Respondent: Ms Z Ahmad, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Bangladesh and his date of birth is 20 January 1973. He made an application for leave to remain which was refused by the Secretary of State on 7 December 2016. The Appellant appealed against that decision. His appeal was dismissed by the First-tier Tribunal Judge R L Walker in a decision that was promulgated on 21 March 2018, following a hearing at Hatton Cross on 12 March 2018. Permission was granted to the Appellant by First-tier Tribunal Judge P J M Hollingworth on 10 May 2018.

2. The Appellant's case is that he entered the UK illegally on 25 January 1996 and his appeal should have been allowed under the long residency rules. He made an application for ILR on the basis of long residency on 6 December 2010 and this was refused on 17 March 2011.

The decision of the Respondent

3. The Secretary of State considered the documents that the Appellant submitted with his claim including pay slips from various employers. The Respondent according to the decision letter, contacted Her Majesty's Customs and Excise. They confirmed that they could not find any record in relation to the NI number that was contained within the Appellant's pay slips. The application was refused under paragraph 322(1A) of the Immigration Rules on the basis that the payslips were not genuine and on suitability grounds (under appendix FM).
4. The Secretary of State accepted that the Appellant's passports which he submitted with his application indicated that he was present in the United Kingdom on 3 December 1996 and 20 January 2010. It was also accepted that the marriage certificate relating to the Appellant's marriage of 14 January 1999 and a decree absolute dissolving that marriage on 14 December 2002 indicated that he was resident here in 1999 and 2000. However, the Respondent's position was that the Appellant had not established continual residence. There was, according to the Respondent, no acceptable evidence to support his claim that he had been living here consistently from 25 January 1996 to 2010.

The decision of the FtT.

5. At the hearing before Judge Walker the Appellant was represented. There was no representation on behalf of the Secretary of State. The Appellant gave evidence as did witnesses [MK] (the Appellant's uncle), [NA] and [JB] (the Appellant's aunts).
6. The Appellant's evidence was that he came to the UK with the help of an agent on 25 January 1996 and had not left since. His uncle [MK] was expecting his arrival here and took him to his own home. He provided accommodation, financial and emotional support. His uncle found him employment in a restaurant. He worked from March 1996 to 2010. He produced wage slips for that period. His evidence is that he was given a NI number by the council and he provided this to his employers. He has not been able to work since 2010 because of his immigration status. Because the Appellant has been here without status he has not been able to open a bank account and has limited documentation to establish that he has been here. He relied on photographs and evidence of family members. He has no family in Bangladesh. His parents died some years ago. He has no links or contacts with that country.
7. The judge found at [32] that the Appellant and his representatives made no attempt themselves to contact HMRC about the Appellant's NI number. The judge found that

if the Appellant thought it was genuine he would have made enquiries not only with HMRC, but with his previous employers. In any event, the judge observed that NI numbers are not issued by the council. The judge noted that the Appellant in oral evidence departed from what he had previously claimed. In his oral evidence he stated that his first employers had asked for his passport and they had given him the NI number. He said that he was not aware that there was a problem with it until he was told by the Home Office. This judge concluded that this was a different account to that given in his witness statement to explain how he obtained the number.

8. The judge observed a number of anomalies in the photocopies of the pay slips submitted by the Appellant (see [34]). The judge recorded at [36] that the Appellant appeared to accept that the NI number he used was not genuine. The judge did not accept that the pay slips were genuine. He concluded that they had been manufactured to support the application.
9. The judge recorded [MK]'s evidence that he had found the Appellant the job at Nazim Balti House (the first employers). His evidence was that he did not know anything about the Appellant's NI number. The judge concluded that [MK] would have been aware of the false NI number and the false pay slips because he worked at the first restaurant and found the job for the Appellant. The judge concluded that this deception "adversely affects the weight of the evidence of not only the Appellant but his family members". The judge found at [36] that the Appellant's family here, including his uncle [MK] were complicit.
10. The judge concluded that the evidence was very limited regarding the period from 2000 to 2010. The judge concluded that there are three photographs at page 132 of the Appellant's bundle which were put before the Appellant and his witness, [NA]. The judge found that there was nothing in the photographs to show where and in what country they were taken. Even if they were taken in the UK, they did not show residence, according to the judge. The judge said that given the lack of evidence for the period 2000 to 2010 and the adverse credibility findings, he did not accept that the Appellant had been continuously resident in the UK during this period and thus he could not meet the requirements of the Immigration Rules.
11. The judge found that he could not show very significant obstacles to integration into Bangladesh. The judge did not accept his evidence that he has no family or contacts there. The judge concluded that it was unlikely that his family are all now in the UK. The judge recorded that the Appellant's mother tongue and his main language is Bengali, noting that he and his witnesses gave evidence through a Bengali interpreter. The judge concluded that he would not be unfamiliar with Bangladeshi culture and language.
12. The judge considered Article 8 outside of the Immigration Rules considering that the Appellant was a 45- year old single man. The judge found that there was no family life in the UK so to engage Article 8 ECHR. The judge accepted that the Appellant has private life here but that the evidence of its quality was lacking. The judge found that

any interference was proportionate to the legitimate aim, namely the economic wellbeing of the country through the maintenance of effective immigration control. The appeal was dismissed under the Rules and Article 8.

The Grounds of Appeal

13. Mr Basith accepted that there was no error of law as regards the conclusion of the judge in respect of Rule 322 (IA). The main thrust of Ms Basith's submissions was that the judge erred in respect of the evidence of the Appellant's aunts. He adopted speculative reasons based on the reliability of the NI number. There were 6 photographs in total and not three as noted by the judge.

Conclusions

14. The Appellant claimed to have been here since 25 January 1996. The Respondent's position was that he was here on 3 December 1996 and 20 January 2010 as supported by his passports. It was accepted that he was resident here between 1999 and 2000. However, there was no evidence of continuous residence up to 2010.
15. The Appellant gave evidence of employment throughout the relevant period. In respect of the NI number he said that he obtained it from the council. The Appellant's uncle's evidence was that he had been here since 1996 and that it was very difficult for someone like the Appellant to obtain documents. He has been living with his uncle who feeds him and he did not have bills in his name.
16. The Appellant relied on the evidence of two aunts. His evidence was that he saw them perhaps every two weeks. The Appellant's aunt, [NA], is a British citizen and came here in 1990. Her evidence contained in her witness statement of 12 March 2018 was that the Appellant has been here since 25 January 1996 and on his arrival, was taken care of by [NA]'s brother, [MK]. He has always lived with [MK]. He has not left the UK since 1996. He has not been able to open a bank account or register with official organisations. He does not have bills in his name. He stopped working because he did not want to breach immigration laws. Her evidence was that the payslips were genuine as they were provided by his past employers to whom the Appellant had given an NI number which he applied for shortly after his arrival in the UK. The Appellant's aunt [JB] made a statement of the same date as [NA]'s which was in similar terms to that of [NA].
17. The judge did not make adverse credibility findings on the basis that the Appellant worked unlawfully and had worked using a false NI number. The Respondent's case was that the pay slips were not genuine and did not establish that the Appellant had been working here. Notwithstanding that Mr Basith indicated in oral submissions that the Appellant did not challenge the decision under para 322 (1A). I have considered the challenge to as set out in the grounds. The extent of it is that the judge's findings are unclear. I conclude that the decision is sufficiently clear (see [39]).

18. The judge was entitled to conclude that the Appellant's uncle was complicit (in the production of false payslips) because on his evidence he worked in the first restaurant and he gave evidence that he had found the employment for the Appellant. This was an entirely lawful inference to draw from the evidence.
19. The judge's findings are grounded in the evidence. It is unarguable that the photographic evidence was capable of supporting continuous residence in the light of the scant evidence, albeit they may have been taken here in the UK. The judge did not ignore the evidence. If he was mistaken in the number of photographs this was not material. Whether there were 3 or 6 photographs the inevitable conclusion from the material before the judge was that evidence of the Appellant's continuous residence from 2000 to 2010 was scant.
20. The judge found at [36] that the "deception adversely affects the weight of the evidence of the not only the Appellant but his family members. I find that the appellant's family have put their support for the appellant before the truth". The findings must be considered in the context of the evidence of the aunts. It is not set out in any detail by the judge but he clearly had it in mind. The aunts made unsupported assertions that they were in regular contact with the Appellant throughout this period. They do not refer to memorable occasions and they do not give any detail to support their evidence. There was no live evidence from others with whom the Appellant had worked throughout that period. Whilst there are skeletal letters from friends who make bare assertions of the Appellant's presence here since 1996, they did not attend the hearing. There was no evidence supporting anything that the Appellant had done that would present a picture of him having been here continuously throughout the period in question. The period is significant and it is reasonable to have expected the Appellant to have shared experiences with others and to have formed relationships with people outside the family.
21. The judge was manifestly entitled to conclude that the payslips were not genuine (there is no challenge to this) and to conclude therefore that the Appellant had not been employed as claimed. The judge was entitled to conclude that the evidence from his aunts which was lacking in essential details was not credible. He was entitled to conclude that the aunts were aware that the payslips that were not genuine. It was a reasonable inference to draw from the evidence. [JB] specifically states in her witness statement that the payslips were genuine (see [8]). [NA] also referred to the Respondent having alleged that the Appellant had submitted false payslips (at [7] of her witness statement).
22. The judge was entitled to conclude that the Appellant could not establish continuous residence for 14 years (or 20 years) having rejected his evidence that he was continuously resident from 1996 - 2010.
23. The judge properly considered para 276ADE. It was open to the judge to conclude that he had not established that he had very significant obstacles to integration. The judge considered the appeal outside of the Rules. He did not accept that the Appellant had

family life here. There is no challenge to the decision on Kugathas grounds (*Kugathas v SSHD* [2003] EWCA Civ 31). The judge accepted that the Appellant has private life and the decision would interfere with this, but ultimately concluded that the decision was proportionate. The decision was entirely open to the judge on the evidence. The Appellant's grounds do not take proper account of s.117B of the 2002 Act. When assessing proportionality, the deception is of course material; however, in this case the Appellant failed to establish family life here or that there would be a significant interference with private life.

23. There is no error of law. The decision of the FtT to dismiss the appeal is maintained.

Signed *Joanna McWilliam*

Date 20 July 2018

Upper Tribunal Judge McWilliam