Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/14585/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11 April 2022	**On 26 May 2022**

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

MR RANJIT SINGH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A. Mohsin, Counsel, instructed by Middlesex Law Chambers
For the Respondent: Ms A. Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of the Secretary of State dated 30 July 2019 to refuse the human rights claim made by the appellant on 5 June 2017. The appellant's appeal was originally heard by First-tier Tribunal Judge Howard who, in a decision and reasons promulgated on 19 April 2021 dismissed the appellant's appeal.

2. By a decision dated 24 January 2022, I found that the decision of Judge Howard involved the making of an error of law in one discrete respect, and set it aside with all findings of fact preserved. I directed that the appeal be reheard in the Upper Tribunal, and it was in those circumstances that the proceedings resumed before me on 11 April 2022. The original appeal to the First-tier Tribunal was brought pursuant to section 82(1)(b) of the Nationality, Immigration and Asylum

Act 2002. I am remaking the appeal in the Upper Tribunal pursuant to section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007.

3. My "error of law" decision may be found in the **Annex** to this decision.

Factual background

4. The appellant is a citizen of India born in May 1974. He claimed to have arrived here in 2001, being joined by his Indian wife, Balwinder Kaur, and their son, Dilpreet Singh, who was born in 2001, in 2016. Neither Mrs Kaur nor Dilpreet Singh have leave to remain. The appellant's human rights claim to the Secretary of State was on the basis that he was entitled to indefinite leave to remain on the basis of the claimed length of his residence (20 years), and the family and private life he had established here. The appellant also claimed that he would face "very significant obstacles" to his integration in India, for the purposes of paragraph 276B(1)(vi) of the Immigration Rules, on account of difficulties he claimed to have experienced with the police before his departure, and through having lost all contact with his family, and his mistreatment at the hands of his wife's family. The Secretary of State refused the human rights claim; the appellant could not demonstrate ten years' continuous lawful residence, as he would in order to obtain indefinite leave to remain, as he had only ever resided here unlawfully. Aside from her rejection of his claim to have been here for 20 years (which is an issue resolved against the appellant by Judge Howard), the Secretary of State concluded that the appellant would not face "very significant obstacles" to his integration in India. He would be able to return as a family unit with his wife and son. His connection to India would be stronger than any connection he had when he arrived in this country, suggesting he would be able to readjust to life in India. He had spent the majority of his life in India before moving to this country and would have retained some ties there.

5. Judge Howard had expressly declined to make findings concerning the appellant's claim to have experienced mistreatment at the hands of the police, an omission which I found to be an error of law, for the reasons given in the Annex. The appellant's claim in this respect is that in September 2000, while he was living with his wife's parents in their family home, some unknown men came with rifles and demanded money. The appellant did not have any money to give them. The men returned a month later. Again, the appellant was unable to assist. One of the men had a knife and waved it about, slicing the top of the appellant's right index finger. The appellant claims the police later attended his home and arrested him for terrorism. He claims to have been mistreated by the police while in their custody before he was released four days later. The appellant reported to the police station, pursuant to his bail conditions, but began to fear for his life, and so made arrangements to leave the country. He claims that he will continue to be at risk from the authorities in India upon his return, and that he cannot turn to any family or friends for assistance there in any event.

6. Judge Howard rejected the appellant's claim to have resided here since 2001, finding that he had arrived in 2010 (see [31]). He also found that the appellant remained in contact with his friends and family in India, at [30]:

> "… I do not find the appellant to be a reliable witness and I reject he [*sic*] assertion that he first arrived in the UK in January 2001. I further reject his assertion that he has no contact with family and friends in India. Both he and his wife have family there and I am satisfied that at the very least they would afford the appellant and his family short

> term support while the appellant found work, something he has done successfully in a country where he does not speak the language. He is a man of considerable practical resources."

7. I did not set aside any findings of fact reached by Judge Howard; his decision was set aside to the limited extent that it failed expressly to consider the appellant's claim to have been mistreated at the hands of the police, which was an omission which I did not consider to be immaterial, as it potentially went to the issue of whether the appellant would face very significant obstacles. Accordingly, the scope of the resumed hearing before me on 11 April 2022 was to make findings on that issue, and conduct a contemporary assessment of the appellant's human rights claim.

The law

8. This is an appeal brought under Article 8 of the European Convention on Human Rights ("ECHR"). The essential issue for my consideration is whether it would be proportionate under the terms of Article 8(2) of the Convention for the appellant to be removed, in light of the private life he claims to have established here. This issue is to be addressed primarily through the lens of the Immigration Rules, and also by reference to the requirements of Article 8 of the Convention directly (see *Razgar* [2004] UKHL 27 at [17]). The Rules relevant to this particular case are contained in paragraph 276ADE(1)(vi) (very significant obstacles to integration).

9. The burden lies on the appellant to demonstrate that Article 8(1) of the ECHR is engaged, to the balance of probabilities standard. Having done so, it is for the respondent to justify any interference with the rights guaranteed by Article 8(1) of the ECHR pursuant to paragraph (2).

The hearing

10. The appellant, Balwinder Kaur and Dilpreet Singh gave evidence and adopted their statements. They were cross-examined by Ms Everett. The appellant and Mrs Kaur gave their evidence exclusively though an interpreter in Punjabi. Dilpreet Singh gave evidence primarily in English, using the interpreter from time to time. I established that all witnesses were able adequately to participate in the proceedings through the interpreter.

11. In the error of law decision, I gave the appellant permission to rely on fresh evidence under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008. Thus the appellant relied on an updated bundle.

12. I do not propose to summarise the entirety of the evidence. Instead, I will summarise the salient elements of the evidence to the extent necessary to reach and give reasons for my findings.

Findings of fact

13. I emphasise that I reached the following findings pursuant to the application of the balance of probabilities standard, in light of my consideration of the evidence in the round.

14. The issues to be considered in this resumed hearing are as follows:

a. Would the appellant face "very significant obstacles" to his integration in India, on account of the claimed mistreatment at the hands of the police or from the terrorists?

b. Are there any other reasons why he would face very significant obstacles upon his return to the country?

c. Would his removal be proportionate for the purposes of article 8 (2) of the ECHR?

No very significant obstacles to integration in India

15. I found the appellant to be a witness who lacks credibility, for the following reasons.

16. First, the accounts in the appellant's statements dated 25 April 2017, 20 January 2020 and 14 March 2022 are high-level and lack detail. They consist mainly in the form of broad assertions with little of the detail one would expect from a person setting out such an account. The appellant's April 2017 statement does not mention anything about having his finger cut by the unknown armed men who were said to have attended his wife's parents' house, whereas in his January 2020 statement, the appellant claimed that his index finger was sliced by one of the men, using a knife. There had been no mention of knives in the earlier statement, and nor did the appellant mention attending a dispensing chemist to have the wound treated, as he did in the January 2020 statement. That is significant because, at [8] of his statement dated 20 January 2020, the appellant attributes the police visit to his home to somebody at the chemist having reported him to the police. By the time the appellant signed his statement dated 14 March 2022, the account had reverted to the initial narrative provided in April 2017, in almost identical terms: see paragraph 2 in each document. The accounts the appellant has provided lack anything like the detail or consistency one would expect in a protection claim, even making the allowances for the difficulties experienced by those fleeing persecution or serious harm. The same is true of the parallel accounts provided by Mrs Kaur in her statements; they add very little to this aspect of the appellant's case.

17. Secondly, I found the appellant's oral evidence to be vague and imprecise. He claimed not to know whether he had been charged with any crime in India, yet has taken no steps to utilise the contacts Judge Howard found he still has with family in India to obtain details of any charges laid against him, or any other material to demonstrate an ongoing interest on the part of the authorities.

18. Thirdly, the appellant was advised by the Secretary of State to make a protection claim in the refusal letter dated 30 July 2019, and has not done so. Pursuant to paragraph (3) of the Headnote to *JA (human rights claim: serious harm) Nigeria* [2021] UKUT 97 (IAC), a person's failure to subject themselves to the procedures that are inherent to the consideration of a claim to refugee or humanitarian protection status upon being alerted to those procedures by the Secretary of State may entitle a tribunal to approach this aspect of a human rights claim "with some scepticism". The appellant's explanation for having not claimed asylum was that he was "not learned" and that he did not know his ways around the world lacked credibility. He was legally represented when he made his human rights claim on 5 June 2017, and has been legally represented in these proceedings. The suggestion that he was not aware of the possibility of claiming asylum, in circumstances when the Secretary of State expressly highlighted the

possibility of doing so, having been represented by the same firm of solicitors for nearly five years, is not credible. I therefore approach the appellant's case with some scepticism.

19. Fourthly, allied to the general failure of the appellant to claim asylum or make a protection claim, he waited until 2017, having arrived in 2010, to raise his fears with the Secretary of State, even in the limited manner outlined above. His credibility is undermined by the delay.

20. Finally, Judge Howard found at [30] that the appellant was not a "reliable" witness, and rejected the core of all central propositions of his evidence to the First-tier Tribunal, namely the claimed length of his residence in the UK, and his lack of family links in India. Judge Howard's findings are relevant to my overall credibility analysis, as they amount to undisturbed findings of fact that the appellant had been an unreliable witness, in the face of having provided shifting accounts of his initial arrival in the United Kingdom (1998, 2001, 2006), and having claimed no longer to have any family connections in the country.

21. Drawing this analysis together, I find that the appellant has not established, even to the lower standard that would be applicable in protection claims, that he experienced any mistreatment at the hands of armed criminals attending his home, or while in police custody.

22. In any event, as pursued by Ms Everett in cross examination, there is no reason why the appellant could not locate to another part of India. The answers provided by the appellant under cross-examination did not engage with the realities of his prospective return to India. For example, he said he would not be able to move to city such as Bangalore because he was a "village person", and never went outside his village. Mrs Kaur's evidence under cross-examination was to similar effect. Putting to one side the fact the appellant and Mrs Kaur currently live in London, which is far removed from a small village, and claim to have a buoyant private life for Article 8 ECHR purposes, it is clear that the appellant has made no effort to engage with the possibility that he may forcibly be returned to India, or what that would entail. The appellant's bald assertions that he would not be able to cope are not substantiated with any real effort on his part to demonstrate why that would be so.

23. While Dilpreet Singh provided a similar account of the likely difficulties the family would face in India, he was only 14 when he left the country, so it is difficult to ascribe much weight to his views in that respect. His evidence largely focussed on the understandable anticipated disruption the family would face upon leaving the country where he attained the age of majority, and, on account of his English speaking skills, has attained a level of integration that has surpassed that of his parents.

24. I reject the appellant's evidence that he would not enjoy the assistance or help from any person in India, or remotely from this country, upon his return. Judge Howard found that the appellant and his wife have family and friends in India who would be able to support them, at least in the short term, while the appellant finds work. That finding is my starting point, and the appellant has provided no evidence which provides a basis for me to reach a different finding, or otherwise depart from it. I do not accept that the appellant and his family are ostracised from their remaining family contacts in India. That claim lacks credibility.

25. The appellant has established life in this country over a number of years, with assistance from members of his community. He has provided no credible reason as to why the support and assistance he has enjoyed during his time here could not be replicated in India, or why he could not receive some form of remitted support from his friends here, at least initially. I reject the appellant's assertion that his friends here would not be able to support him "because they are struggling to make ends meet"; the appellant's residence in this country is a decade-long example of assistance from friends and relatives being provided to the appellant, whether in the form of flights, or in-country financial support. That support has enabled the appellant to live, as a family of three with his wife and (adult) son, in circumstances when none of them hold any leave to remain, with all the practical difficulties that that entails. The appellant will be well-placed to resume life in the country of his nationality, where, of course, he will benefit from his knowledge of the language, culture and customs in a way that he has not here. The appellant is of working age and there is no reason why he will not be able to find work.

26. For those reasons, I reject the appellant's evidence that he would face very significant obstacles to his integration in India, either as a result of threats from unknown terrorists, the police, or for any other reason, including from his family or Mrs Kaur's family. Even if the appellant does have a subjective fear of returning to his home area (a contention I reject), as Ms Everett submitted, he will be able to relocate to elsewhere in India.

27. Those findings are dispositive of the appellant's human rights appeal under the Immigration Rules, I turn now to an assessment of the appellant's appeal by reference to the requirements of Article 8 directly. I accept that the length of the appellant's residence in this country, on Judge Howard's findings, will be sufficient to engage Article 8 of the ECHR on a private life basis. It will not engage his family life rights as his family will be able to return with him, as a family, should they choose to do so (indeed, they enjoy no leave to remain here in any event). The appellant's removal will, in principle, have consequences of sufficient severity to engage the protection of Article 8. That interference would be "in accordance with the law", in the sense that it would be conducted pursuant to an established legal framework, coupled with a right of appeal to this tribunal. It would, in principle, be for one of the reasons permitted by the derogation in Article 8(2) ECHR. The remaining question is whether his removal would be proportionate. To address that question, I adopt a balance sheet approach.

28. Factors in militating in favour of the appellant's removal include:

    a. The maintenance of effective immigration controls is in the public interest (section 117B(1) of the 2002 Act);

    b. The appellant does not meet any of the requirements of the Immigration Rules, and so does not meet the criteria established by the Secretary of State for leave to remain in the country, which is a matter of considerable weight;

    c. The appellant does not speak English. He provided no evidence of his broader integration in society;

    d. The appellant entered as an illegal entrant and has remained here for over a decade without leave to remain;

    e. The appellant will not face very significant obstacles to his integration;

f. None of the appellant's immediate family have leave to remain. The family will be able to return to India as a family unit, maintaining the family life they currently enjoy together;

g. The family still have contacts in India, and will not be without support, at least initially while the appellant finds work.

29. Factors mitigating against the appellant's removal include:

a. The appellant has lived here since 2010, and, while his return to India will not feature very significant obstacles to his integration, his removal will nevertheless be an unwelcome upheaval for the whole family, whether they leave together, or the appellant returns alone (putting to one side any concerns arising from the immigration statuses of Mrs Kaur and Dilpreet Singh);

b. Dilpreet Singh was brought here as a child, and so formed a significant attachment to life in the UK as a child which, on any view, will be impacted by the appellant's removal, whether he stays here without the appellant, or goes with him. Dilpreet's integration surpasses that of his parents;

c. Mrs Kaur is strongly opposed to the family's removal, or that of the appellant, in light of the disruption it will present, and the family's length of residence here.

30. Weighing the factors in favour of the appellant's removal against those militating against it, I consider that his removal would be proportionate for the purposes of Article 8(2) ECHR. There are, all things considered, very few factors on the appellant's side of the balance sheet. He is an overstayer of some vintage. While he has worked, that has been unlawful and, as Judge Howard noted, he has had recourse to the NHS. The public interest in the maintenance of immigration controls is a weighty factor. On the basis of the evidence before me, nothing in the circumstances of the appellant and his family demonstrates that there are exceptional circumstances such that it would be unjustifiably harsh for him to be removed. On the contrary, the appellant's removal would represent a fair balance between the public interest in the maintenance of immigration controls, on the one hand, and the strong desire of the appellant and his family for the appellant to remain living here, on the other. Upon his return to India, the appellant would no longer be an unlawful migrant, not speaking the language, nor being allowed to work. His removal would not be disproportionate. The appeal is dismissed.

Notice of Decision

This appeal is dismissed.

No anonymity direction is made.

Signed Stephen H Smith Date 6 May 2022

Upper Tribunal Judge Stephen Smith

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Stephen H Smith Date 6 May 2022

Upper Tribunal Judge Stephen Smith

Annex – Error of Law Decision

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/14585/2019

THE IMMIGRATION ACTS

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On 25 November 2021	.....

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

MR RANJIT SINGH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D. Coleman, Counsel instructed by Middlesex Law Chambers
For the Respondent: Ms Z. Ahmad, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Ian Howard ("the judge") promulgated on 19 April 2021. The judge dismissed an appeal by the appellant, a citizen of India born on 26 May 1974, against a decision of the respondent dated 30 July 2019 to refuse his human rights claim, made on 5 June 2017. The appeal had been brought under section 82(1)(b) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"), which provides that a person may appeal to the First-tier Tribunal against the refusal of a human rights claim.

Factual background

2. The applicant claims to have entered the UK in early 2001, unlawfully, and to have lived here ever since. On 5 June 2017, he applied to the Secretary of State for leave to remain on the basis of the length of his residence (which was then 17 years, on his case), and his family and private life under Article 8 of the European Convention on Human Rights ("the ECHR"). The appellant's wife and son arrived here in 2016; they live with him here, and also do not hold leave to remain. The appellant claimed that he was forced to leave India because he "was having issues with the police", who detained him on spurious charges relating to having assisted terrorists. He also claimed that he owed money to certain people and that is life would be in danger. He later claimed that his wife's family had disapproved of their marriage, and that, upon his return, he could not expect any support from them, or from his own family, from whom he and his wife were now estranged. He has not made a protection claim.

3. By the time the appellant's appeal before the First-tier Tribunal was heard on 25 February 2021, the appellant claimed that he had accrued 20 years' continuous (if unlawful) residence, with the effect that he would be entitled to leave under paragraph 276ADE(1)(iii) if the Immigration Rules. Accordingly, that was the central issue before the judge, who heard evidence from the appellant and his friend Akam Singh. The judge also had before him a number of items of documentary evidence relating to the appellant's claimed length of residence, and his private and family life.

The decision below

4. In his reserved decision, the judge summarised the appellant's claimed immigration history and other relevant dates, and outlined what took place at the hearing. He directed himself concerning the burden and standard of proof, and briefly summarised the evidence that he had heard. The appellant had claimed to have travelled to the United Kingdom hidden in a lorry via Ukraine, while his wife remained in India. She gave birth to their son, Dilpreet, on 1 September 2001 and visited the appellant here in 2010 and 2012, bringing Dilpreet on the second occasion. In 2016, the appellant's wife and Dilpreet visited him again, this time staying here upon the expiration of their visas. The appellant claimed that, although his elder and younger brother live in the family home in India, he is not in touch with them, and has no friends there either, or at least if he does, they do not support him. The appellant explained why he considered that, aged 45 and without a support network, he would be unable to integrate into society, find employment and support his family.

5. It had been the appellant's evidence that he met Akam Singh at the gurdwara in Southall in January 2001. The judge outlined some of the conflicting evidence which had been put to the appellant, including a Home Office record that he once claimed to have arrived in 2006, and outlined some of the key points put to the appellant during cross examination. In relation to Akam Singh's evidence, he initially claimed to have met the appellant in 2000, but when told that the appellant had only claimed that they had met in 2001, Mr Singh corrected himself, before adding that it was November or December 2000. The appellant had relied on a tenancy agreement dated 1998.

6. In a section headed "*Findings*", the judge highlighted that it was common ground between the appellant and respondent that the appellant had been here since June 2010 continuously, and stated that his focus would be the period from 2001 to 2010.

7. Since this is an appeal which requires this tribunal to engage in an analysis of the judge's findings of fact, it is necessary to quote those findings at some length:

> "27. The appellant says he actually arrived in the UK in 2001. The evidence to support that contention is varied. The appellant says it and he points to what a tenancy agreement and Mr Singh also saved. What the tenancy says is that the appellant entered into an agreement in 1998. The appellant says that is wrong. Mr Singh says it was November or December 2000 when he met the appellant at the Southall gurdwara.
>
> 28. We are talking of events fully 20 years ago now and without anything to assist Mr [Akam] Singh to fix the meeting in time apart from his own recollection, to be precise is now difficult. However, the tenancy agreement is a quite different piece of evidence. It is relied upon by the appellant as a contemporaneous document, created at a time it was dated to establish the fact of his presence in the UK at that time. It is dated 1998. On any view appellant was not in the UK in 1998. The appellant says the document is in error. What I do not know as the appellant was unable to assist on this, is when the document should be dated. As a consequence I can place no reliance at all on the tenancy agreement as a contemporaneous document as there is no evidence as to when it was created.
>
> 29. The appellant has provided a number of dated [sic] for his first arrival in the UK. 2000, 2001 and 2006. He simply says the earliest and latest dates were never given by him. This I do not accept. On both occasions the source is said to be the appellant and I am satisfied that it was the appellant who offered forward those dates.
>
> 30. As a consequence I do not find the appellant to be a reliable witness and I reject he [sic] assertion that he first arrived in the UK in January 2001. I further reject his assertion that he has no contact with family and friends in India. Both he and his wife and family there and I am satisfied that at the very least they would afford the appellant and his family short-term support while the appellant found work, something he has done successfully in a country where he does not speak the language. He is a man of considerable practical resources."
>
> 31. The earliest date the appellant can reliably be shown to have arrived in the UK is 2010 and I am satisfied [that] that is when he arrived."

8. The judge found that the appeal could not be allowed under Article 8 on the basis that the appellant met the immigration rules, and proceeded to analyse Article 8 "outside the rules". Having directed himself on the basis of a number of 2015 and 2016 authorities addressing Article 8, the judge set out the five questions at [17] of *Razgar* [2004] UKHL 27.

9. In addressing the *Razgar* criteria, the judge accepted that the appellant's removal would interfere with his private life, that had been established over 11 years in this country, and that the interference would be of a sufficient gravity so as to engage Article 8. He accepted that the interference would be in accordance with the law, and found that it would be necessary in a democratic society. In relation to that issue, the judge set out a number of factors militating in favour of the appellant's removal: the appellant's presence in the UK has always been

unlawful, and any family life enjoys with his wife and son, who are also here unlawfully, is of no weight; the appellant does not speak English; his activities appear to be limited to the Indian diaspora in west London; he works (illegally) but pays no taxes; he had availed himself of treatment on the NHS, and was a burden to the taxpayer. The judge said that there was "nothing" that weighed on the appellant's side of the balance, and that the need for effective immigration controls was an additional factor in favour of the respondent's position. The appellant had made no attempt to regularise his status, and the sole contact that the appellant had had with the respondent prior to making this application, during an enforcement "encounter" in 2013, had not led to the appellant seeking to regularise his status at that stage. Those factors also went to the proportionality assessment required under the fifth *Razgar* question, found the judge, leading him to dismiss the appeal.

Grounds of appeal

10. Drawing on the summary in *R (Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982 as to when certain findings of fact may amount to an error of law, the grounds contend that the judge failed to give reasons, or any adequate reasons, for findings he made a material matters; and that the judge failed to resolve conflicts of fact on material matters.

11. Permission to appeal was granted by First-tier Tribunal Judge Beach.

Submissions

12. Developing the grounds of appeal, Mr Coleman submitted that the judge the judge failed properly to take into account the evidence of Akam Singh, which corroborated the appellant's evidence concerning the date of his arrival, as, had said Mr Singh, it coincided with Guru Nanak's birthday festival which is celebrated in November. Having not found Mr Singh to lack credibility, the judge should have placed more weight on his evidence, submitted Mr Coleman. The judge additionally failed to make findings concerning a number of witnesses whose written evidence was consistent with the appellant's case, such as the evidence of one witness who stated that she had known the appellant since 2008, and was aware of the claimed abuse the appellant's wife said that she suffered at the hands of her family in India.

13. Mr Coleman submitted that the judge's refusal to make findings concerning the reasons the appellant left India, at [12], was an error.

14. For the Secretary of State, Ms Ahmad submitted that the judge reached findings that were consistent with the evidence, and that reasons can be brief and need not be detailed. In any event, it is clear why the judge did not accept Mr Singh's evidence. There is no reason to refer to everything when reaching a decision; overall, it is very clear why the judge dismissed the appeal. The judge was fully cognisant of the broader features of the appellant's private life in this country, and took those matters into account when addressing the impact of the appellant's prospective removal.

The law

15. The jurisdiction of the First-tier Tribunal was to hear the appellant's appeal against the refusal of his human rights claim, which had been made on the basis of Article 8 of the ECHR.

16. Under section 11(2) of the Tribunals, Courts and Enforcement Act 2007, an appeal lies to the Upper Tribunal against a decision of the First-tier Tribunal on "on any point of law arising from a decision made by the First-tier Tribunal", rather than a disagreement of fact. However, certain findings of fact are capable of being infected by an error of law, as notably summarised in *R (Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982 at [9]. Relevant for present purposes are the following:

> "i) Making perverse or irrational findings on a matter or matters that were material to the outcome ('material matters');
>
> ii) Failing to give reasons or any adequate reasons for findings on material matters;
>
> iii) Failing to take into account and/or resolve conflicts of fact or opinion on material matters…"

17. But it is important for an appellate tribunal or court to exercise judicial restraint when reviewing findings of fact reached by a first instance judge. See the judgment of Lewison LJ in *Fage UK Ltd. v Chobani UK Ltd.* [2014] EWCA Civ 5 at [114]:

> "i. The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed.
>
> ii. The trial is not a dress rehearsal. It is the first and last night of the show.
>
> iii. Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court, and will seldom lead to a different outcome in an individual case.
>
> iv. In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.
>
> v. The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence).
>
> vi. Thus even if it were possible to duplicate the role of the trial judge, it cannot in practice be done."

18. The judgment in *Fage UK Ltd. v Chobani UK Ltd* is eight years old, but it continues to represent a useful summary of the law on the approach to findings of fact, and the deference owed by appellate tribunals and courts to first instance judges. See the Supreme Court in *Perry v Raleys Solicitors* [2019] UKSC 5 at [52] which summarised the principles on the 'constraints' on appellate courts and tribunals in these terms. Lady Hale said the principles:

> "…may be summarised as requiring a conclusion either that there was no evidence to support a challenged finding of fact, or that the trial judge's finding was one that no reasonable judge could have reached."

19. Most recently see the Court of Appeal in *Lowe v Secretary of State for the Home Department* [2021] EWCA Civ 62 at [29].

Discussion

20. Mr Coleman's submissions concerning the judge's analysis of Akam Singh's evidence are a disagreement of fact and weight. Having considered the entirety of the evidence, in the round, the judge reached findings that were open to him on the evidence he heard. As the judge noted at [28] when addressing Mr Singh's evidence concerning the first time he met the appellant:

> "We are talking of events fully twenty years ago now and without anything to assist Mr Singh to fix the meeting in time apart from his own recollection, to be precise is now difficult."

Mr Coleman accepted that that was a "good" self-direction concerning the impact of the passage of time on memory. I agree. The judge had correctly reminded himself that a witness's recollection of events two decades ago may feature flaws. I therefore reject Mr Coleman's submission that the judge was bound to accept the entirety of Mr Singh's evidence at face value, in the absence of an adverse credibility finding. He was not; what the judge *was* bound to do was to place Mr Singh's recollection of meeting the appellant alongside the remaining evidence in the case, recalling the inherent weaknesses in the recollection of a witness concerning the date of an event that took place a considerable time ago, and reach findings in the round. That is precisely what the judge did.

21. In so doing, the judge was entitled to ascribe significance to the fact that the appellant had informed the respondent that he arrived in the United Kingdom in 2000, 2001 and 2006, and had provided a tenancy agreement in purported support of his evidence in the appeal that would have placed him here in 1998. In short, the appellant had given wholly inconsistent accounts on a number of occasions, and submitted documentary evidence that provided yet a further date. The judge was entitled to reject the appellant's explanation for those inconsistencies, which amounted to little more than an unreasoned attempt to distance himself from his own previously inconsistent statements, at [29]:

> "[The appellant] simply says the earliest and latest dates were never given by him. This I do not accept. On both occasions the source is said to be the appellant and I am satisfied that it was the appellant who offered forward those dates."

22. Taken at their highest, the remaining character references do not place the appellant in the United Kingdom anything like as long ago as 2001. Accordingly, nothing turns on the fact the judge did not address them. Weight is a matter for the judge, and it is trite law that a judge does not need to repeat back to the parties all the evidence in the case especially where, as here, some of that evidence was of no relevance to the judge's operative reasoning. The judge had regard to the "whole sea of evidence", whereas this appellate tribunal is merely "island hopping" (see *Fage UK Ltd v Chobani UK Ltd*).

23. I will now address Mr Coleman's submission that the judge's decision not to make findings on the reasons the appellant claimed to have left India at [12] meant that his analysis at [30] was flawed and not open to him. This is what the judge said at [12]:

> "The appellant told me about the circumstances he maintains caused him to leave India in early 2000. This is

> not a protection claim and so I will not make any findings about the matters then spoken of."

24. The "matters then spoken of" were the appellant's account of having been arrested in September 2000, detained and mistreated by the police. The appellant's account of such matters featured in his witness statement dated 25 April 2017: see paragraphs 2 and 3, in which the appellant stated that he was arrested for having assisted a terrorist and beaten by the police. That statement was provided to the Secretary of State as part of the appellant's human rights claim. In his skeleton argument before the First-tier Tribunal, the appellant argued that the issues set out in his statement meant that he would face very significant obstacles to his integration in India: see paragraphs 2 and 3.

25. While the judge was right to observe that the appellant had not made a protection claim, it was still necessary for the judge to reach findings on whether he accepted or rejected the appellant's account of what took place in India concerning the police, as it went to the issue of "very significant obstacles" in the context of the appellant's prospective re-integration. This was a matter that had been before the Secretary of State, and was raised as an issue for resolution before the First-tier Tribunal by the appellant in his skeleton argument.

26. It is now well established that a human rights claim may feature consideration of matters that would usually be considered under the auspices of a human rights claim. See *JA (human rights claim: serious harm) Nigeria* [2021] UKUT 00097 (IAC), at paragraphs (2) to (4) of the headnote.

27. It is not possible for this tribunal to conclude that the judge's error was immaterial. While the judge had significant concerns about the appellant's credibility, the judge expressly declined to make any findings regarding the appellant's claimed obstacles to integration upon his return on this basis, and there is a significant, and discrete, portion of the appellant's human rights claim in relation to which judicial findings are yet to be made. That was an error of law, and the decision must be set aside for that basis.

28. I therefore set aside Judge Howard's decision. I preserve all findings of fact reached by the judge, specifically those from paragraph 25 onwards.

29. The appeal will be re-heard in this tribunal to address the appellant's claim that he will face very significant obstacles on account of his claimed mistreatment at the hands of the police.

30. The resumed hearing will not revisit the appellant's claim to have resided here for 20 years; pursuant to Judge Howard's preserved findings of fact, the appellant has been found to have arrived in 2010.

31. If the appellant wishes to apply for permission to rely on further evidence under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008, he must do so within 21 days of being sent this decision.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and is set aside, subject to the findings of fact reached at paragraphs 25 and following of the decision being preserved.

The appeal will be reheard in the Upper Tribunal to address the appellant's claimed very significant obstacles arising from his claimed mistreatment at the hands of the police.

If the appellant wishes to apply for permission to rely on further evidence under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008, he must do so within 21 days of being sent this decision.

Both parties should attend the resumed hearing prepared to address the impact, if any, of *JA (human rights claim: serious harm) Nigeria* [2021] UKUT 00097 (IAC) on their respective cases in these proceedings.

Signed Stephen H Smith Date 24 January 2022

Upper Tribunal Judge Stephen Smith