



CHAMBER)

**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM
APPEAL NUMBER: IA/48056/2013**

THE IMMIGRATION ACTS

Heard at: Field House

Determination

On: 16 October 2014

Promulgated

Prepared: 27 October 2014

On: 30 October 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

**MR DHARAM PREET SINGH PADDA
NO ANONYMITY DIRECTION MADE**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr E Waheed, counsel (instructed by Starck Ubeori Solicitors)

For the Respondent: Mr S Kandola, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of India, born on 17th January 1978. He appeals with leave against the determination of First-tier Tribunal Judge Norton-Taylor promulgated on 9th June 2014, in which he dismissed the appellant's appeal under the Immigration Rules.
2. The appellant appealed against the respondent's decision dated 12th October 2013 to remove him from the UK by way of directions under s.10 of the Immigration and Asylum Act 1999.

The appellant's immigration history

3. The appellant arrived in the UK on 5th August 2007 with leave to work as a work permit holder. That permit was valid from 27th July 2007 until 24th July 2012. The stated employer was Four In One Fast Food Restaurant Ltd ("Four In One"). The appellant was to work as a Head Chef.
4. The appellant asserted that as a result of bad treatment by the employer, he left that employment in December 2007. In contrast, Four In One wrote to the respondent alleging that the appellant had left his employment on 20th October 2007.
5. The appellant then commenced working for a tandoori restaurant for a brief period and in 2008 suffered a spontaneous pulmonary embolism for which he was treated and from which he recovered.
6. After that he took up employment with various companies, mainly in the construction trade. At the date of the hearing he had an offer of full time employment.
7. On 18th July 2012, the appellant made an application for indefinite leave to remain as a person who has resided in the UK as a work permit holder for five years. The covering letter that accompanied the application relied on Article 8.
8. The respondent stated that Four In One wrote to them confirming the cessation of that employment on 20th October 2007. The respondent then decided that the appellant's leave would be curtailed as he had ceased to satisfy the immigration rules under which his leave was granted. His leave was consequently stated to expire on 19th February 2008 and accordingly the appellant was now therefore an overstayer.
9. His application was considered under paragraph 134 of the Immigration Rules. He failed to meet the requirements following the curtailment of his leave in 2008. No consideration was given to Article 8 despite the content of the covering letter.
10. The first Tribunal Judge in a careful and detailed determination set out the relevant provisions of the Immigration Rules in full.
11. He considered the evidence by the parties. That included a copy of the letter from Four In One to the respondent dated 22nd October 2007 contending that the appellant had left their employ. The response to that letter was also produced.

- 12.** However, a copy of the curtailment decision form itself dated 2008 was not provided. Nor was there proof of its having been sent to the appellant.
- 13.** The appellant denied receiving the curtailment letter, claiming that he first knew of the curtailment of his leave when he was arrested in October 2012. That arrest involved mistaken identity and was of no further relevance in the appeal [15].
- 14.** The appellant claimed that he in fact left Four In One in December 2007 and not October.
- 15.** He confirmed that he had not told the respondent himself about his change in circumstances following his departure from Four In One. He claimed that his previous solicitors were supposed to have informed the respondent instead. They had told him 'not to worry'. He did not tell the respondent about his further and subsequent employment or employers as he did not believe he needed to - [16].
- 16.** In cross-examination he confirmed that he had worked in India as a chef. He claimed that he could not be a chef on return as a result of his health.
- 17.** He has not reported the alleged ill treatment by Four In One to the police. The employer had threatened that if he did so, his family in India would be harmed. That was not in his statement but he claimed he had mentioned it to his solicitors. He did not mention the threat at the outset of the hearing as he had just remembered it.
- 18.** Counsel who represented the appellant at the hearing - not Mr Waheed - accepted that the appellant "struggled" to satisfy the requirements under paragraph 134 of the rules, even if he is correct about the treatment from Four In One [30].
- 19.** Counsel further accepted that he could not satisfy paragraph 276 ADE of the rules because of his ties to India. She nevertheless submitted that the Judge should consider the Article 8 claim outside of the rules on the basis that the respondent had failed to consider this issue at all despite its having been raised in the covering letter. Submissions were then regarding private life and proportionality.
- 20.** Judge Norton-Taylor made detailed findings. He accepted that the appellant continued in employment until early December 2007. He was also willing to accept that the appellant was not well treated by Four In One - [41] and [42].

21. He found that the appellant's failure to report the alleged abuse to the police was untruthful [45]. His reasons for that finding are not the subject of any ground of appeal.
22. He found that the appellant had left his employment with Four In One without informing the respondent.
23. He had regard to the failure by the respondent to produce the actual conditions attached to the work permit which are on the reverse of the Permit at page 153AB [48].
24. He nonetheless found that it was clear that the appellant was, or should reasonably have been aware of his own obligations to inform the respondent if he left the employment specified in the permit. Accordingly, the Judge found that the appellant was in breach of the conditions of his leave, finding that it was more probable than not that he knew this to be so all along.
25. The reasons were that the conditions on the reverse of the permit are actually for the employer. The absence of these conditions is not supportive of the appellant's claim that he was unaware of the need to tell the respondent of changes - [49-50]
26. Further, the entry clearance issued to the appellant in July 2007 clearly stated "Work (and any changes) must be authorised." The words are clear and the Judge did not accept that the appellant was unaware of the condition, or that he did not understand their effect. It was his business to understand the basis upon which he was coming to the UK to work. He was able to read and comprehend the words on his entry clearance and the obligations imposed thereby - [51].
27. He accordingly found that the appellant knew about the need to inform the respondent of his departure from Four In One at least on his arrival in this country, if not beforehand.
28. The appellant's attempt to blame his previous solicitors for their alleged failure to inform the respondent was undermined by his own oral evidence that he did not know that he needed to tell the respondent about changes in his employment in the first place. That claimed ignorance was found to be untrue [53]. There was no evidence that the solicitors had acted negligently as claimed. Nor was there any evidence that he ever contacted them as he should have done - **BT (Nepal)**.
29. Further, when he made the application for indefinite leave to remain in July 2012, the SET(0) Form at section 11 acknowledges that the appellant did not have confirmation from "the employer named in your current work permit" but this was still required for "the employment in question."

In the application the respondent was referred to the covering letter which was based on Article 8 considerations which in turn relied on the work permit as simply a factor in respect of the human rights claim.

- 30.** The Judge accordingly inferred that the appellant knew at the time of the application that he was not employed by the correct employer (Four In One) and that his application would not succeed under the work permit rules. That is why Article 8 was relied on. That knowledge supported his previous finding that the appellant was aware of his breach of conditions. It also undermined his evidence that he was unaware of the curtailment of his leave until October 2012.
- 31.** The Judge found that he knew full well prior to that time that he was in breach of his leave and that the curtailment of that leave “was highly likely to have occurred.” [55]
- 32.** Judge Norton-Taylor then dealt with the respondent's contention that the appellant's leave had been curtailed. Despite the fact that the respondent was unable to produce the curtailment itself, or at least prove that it had been sent to the appellant, he found that a curtailment decision was in fact made and that it was in fact sent to the last known address of the appellant [57].
- 33.** The basis for that finding was that, following the receipt of the letter from Four In One, it is highly likely that the respondent would have acted to curtail his leave. On the evidence, he was clearly in breach of the conditions of his leave. Even on the appellant's own case, he left employment as specified in the work permit in December 2007 without authorisation.
- 34.** Further, the appellant's employment with Four In One was in Scotland. After leaving Four In One, he went to London to find work. He has remained there since. He failed to inform the respondent about his departure from Four In One and consequently failed to inform the respondent about his change of address [59].
- 35.** In the circumstances, the Judge found that it is more probable than not that the respondent did send the curtailment decision to the appellant's last known address, and his failure to receive it was “down to his own inaction”- [60].
- 36.** He found that the appellant had been working almost continuously between 2008 and 2014. There was a wealth of documentary evidence supporting that. (That is not disputed).
- 37.** He found however that all his employment after his departure from Four In One was unauthorised and in breach of the conditions of the

appellant's leave. He found that as the appellant knew that his departure from Four In One, without informing the respondent, rendered him in breach of his leave; he also knew that all subsequent employment was in breach as well [65].

- 38.** He also found that the appellant had continued to work in clear breach of the prohibition imposed by IS 96, dated 12th October 2013. There was no evidence that the respondent had given him any permission to work following notification of his liability to removal.
- 39.** Judge Norton-Taylor had regard to the appellant's ties in the UK. He accepted that the appellant has established friendships here over the course of time and is an active and important member of the Gurdwara's congregation. The relationships are not based on genuine dependency, emotional or health related. He does not have any children or a partner.
- 40.** He went on to consider the appellant's circumstances in India, finding that he had worked as a chef in India for some eight years prior to coming to the UK. Both his parents reside in India as does a brother. [75-76]
- 41.** Judge Norton-Taylor set out his conclusions from paragraph 78 onwards. The appellant's case under paragraph 134 of the rules failed [78]. Nor could he satisfy paragraph 276ADE. He considered whether he should go on and consider Article 8 outside the rules. He asked himself whether there are good arguable grounds 'for moving on from the rules considering an independent Article 8 claim' [80]. He found that the respondent was not obliged to consider Article 8 without an application having been expressly made in the application on that basis.
- 42.** In any event, he was able to take on the role as primary decision maker in respect of the Article 8 claim [85].
- 43.** In assessing whether there are good grounds to consider the Article 8 claim outside of the rules, he concluded that the appellant had only been in the UK for nearly seven years; about a third of the period required by paragraph 276ADE (iii). He was thus not close to the threshold expected by the rules.
- 44.** His time in the UK had been spent almost entirely in breach of the conditions of the leave to which he had been initially entitled. Accordingly, his position ever since December 2007 has been precarious. He has known this or at the very least ought to have known it. His work after Four In One has been effectively unlawful. He continued to work even after being notified of the removal decision.

45. Article 8 does not protect a right to work. His past employment and future job offer do not take the case further. His friendships and community ties do not disclose any significant relationships based on inter-dependency. Communications with friends can be maintained from India. There are no health issues or children involved. He does not have a partner.
46. Accordingly, there was nothing in the appellant's Article 8 claim that gives rise to even an arguable case, let alone a good arguable case for reaching out beyond the scope of paragraph 276ADE. [87]
47. The Judge nevertheless stated that if a "belt and braces" approach was to be taken, and Article 8 was considered outside the rules, he would conclude that the appellant does have a private life here based on friendships established over time and his good works for the Gurdwara. His removal to India would interfere with that life to a sufficiently serious extent and so engage Article 8. The respondent's decision is in accordance with the law and pursues a legitimate aim.
48. In terms of proportionality, the Judge referred to and incorporated all the matters set out from paragraph 86 of the determination onwards. The respondent's side of the scales is added to by the fact that the appellant has not satisfied paragraphs 134 and 276 ADE. Accordingly, the appeal was dismissed on that basis as well.

Appeal to the Upper Tribunal

49. On 2nd September 2014, Upper Tribunal Judge Coker granted the appellant permission to appeal on the basis that it is arguable that the failure to produce the notice of curtailment together with evidence of service in accordance with the Notices Regulations may have led to an error of law in determining an appeal against removal as an overstayer, such removal decision possibly not being in accordance with the law on that basis.
50. She stated that it was not clear from the determination on what basis the Judge found that the curtailment notice had been properly served.
51. She warned the appellant however that he should be aware that if an error of law is found, given the detailed consideration by the First-tier Tribunal Judge to the facts and evidence, the factual findings may well stand.
52. Mr Waheed submitted that there had been no evidence of the existence of the curtailment decision or proof of its service. The First-tier Tribunal Judge "relied on imagination or wishful thinking" in arriving at the

findings set out at paragraphs 56-60. Nor could it be said to have been served, even if it did exist.

53. Mr Waheed conceded that the appellant was unable to succeed under the rules relating to the work permit scheme.
54. He submitted, however, that 'taking into account the absence of curtailment', this was relevant in the balancing exercise and constituted a "positive factor" in the appellant's favour.
55. On behalf of the respondent, Mr Kandola submitted that the Judge has given full reasons relating to the Article 8 claim in the light of **Gulshan**. He has taken into account all the "positive features" applicable to the appellant's case, including the fact that he has been here for seven years.
56. He submitted that the s.10 notice was not unlawful. It does not affect the outcome under Article 8. That is because the Judge clearly found that the appellant had been in breach of conditions - [49] [51] [65]. Those constituted weighty factors. The mere fact that the appellant did not receive the curtailment decision did not make the removal decision unlawful as it is clearly lawful on another basis. Nor does it affect the Article 8 claim with regard to private life.
57. Mr Waheed replied that the reliance on the curtailment decision for issuing a s.10 decision should have been taken into account when assessing the proportionality of the proposed decision. It had been issued on a "misconceived basis".

Assessment

58. There are no issues raised in the grounds of appeal apart from the finding as to the existence of the curtailment decision and its service on the appellant. It is not contended that the findings of fact made by the Judge relating to the appellant's state of mind after he left employment in December 2007 were not properly reasoned from the available evidence.
59. Judge Norton-Taylor has set out very clearly what the basis of his findings were, not only in relation to the curtailment decision itself and its service on the appellant, but also his findings that the appellant had knowingly remained in the UK in breach of the conditions which attached to his visa.
60. The Judge was aware that the burden of proof on this issue was on the respondent. He found that that burden had been discharged [60]. He found it to be highly likely that the respondent would have acted to curtail the appellant's leave in the circumstances. In coming to that conclusion the Judge referred to the letters sent by Four In One to the

respondent confirming the cessation of his employment with them. That would have triggered a decision to curtail his leave.

- 61.** Further, the appellant's employment had been in Scotland (which is not disputed). After leaving that employment, he went to London and found work there. He has remained there ever since. The appellant does not dispute that he failed to inform the respondent about that departure. He has not disputed the finding that he failed to inform the respondent about his change of address [59].
- 62.** In those circumstances the Judge found that it was probable that the respondent sent the curtailment decision to the appellant's last known address and his failure to receive it was a result of his own inaction.
- 63.** I find from the available evidence that the Judge has given cogent reasons for his conclusions that the curtailment decision did in fact exist and that it was sent to the appellant's last known address.
- 64.** In any event, the Judge went on to consider whether there are good grounds to consider the Article 8 claim outside the rules. Despite the fact that this had not been considered by the respondent on the basis that she was not obliged to consider an Article 8 claim without an application having been expressly made on that basis, the Judge took on the role as a primary decision maker in respect of the Article 8 claim.
- 65.** At paragraph 86 onwards, he has given cogent reasons for concluding, as he did, that there was nothing in the appellant's Article 8 claim that gave rise to an arguable case. However, he briefly considered Article 8 outside the rules and concluded that the interference was in the circumstances proportionate.
- 66.** In coming to that conclusion, Judge Norton-Taylor had regard to the fact that the appellant had either known or ought to have known that most of his time spent in the UK working was in breach of his conditions of leave to which he was initially entitled. Accordingly, his position ever since December 2007 had been precarious.
- 67.** In the circumstances he concluded that his removal to India would not constitute an unlawful or disproportionate interference with his Article 8 rights. The only submission made by Mr Waheed was that because the reliance on the curtailment decision was 'misconceived', that was a factor that should have been taken into account when considering the Article 8 claim and in particular the proportionality of the proposed interference.
- 68.** However, as indicated, the Judge has found that the appellant was aware that he had remained in breach of conditions applicable to his visa, and

was thus aware throughout of the precarious nature of his immigration status in the UK.

- 69.** Accordingly, even assuming that there has been an error of law regarding the existence and service of the curtailment decision, the finding that the appellant was knowingly in breach of the conditions governing his leave was based on cogent reasoning and has not been the subject of any submission on appeal.

Decision

The decision of the First-tier Tribunal Judge did not involve the making of any material error on a point of law. It shall accordingly stand.

No anonymity order made.

Signed: Deputy Upper Tribunal Judge Mailer
2014

Dated: 27 October