



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/00233/2016**

Appeal Number

THE IMMIGRATION ACTS

**Heard at Manchester
On 9th March 2018**

**Decision and Reasons Promulgated
On 14th March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

**WEE YEW TEIK
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr W McCready (Counsel, instructed by Ashraf Law)
For the Respondent: Mr C Bates (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant is a citizen of Malaysia and was born on the 13th of April 1966. He arrived in the UK in 1994 and claims not to have left the country since then. On the 4th of August 2015 the Appellant applied for LTR on the basis of long residence under the Immigration Rules. the application was refused for the reasons given in the Refusal Letter of the 14th of December 2014 and the Appellant appealed.
2. The appeal was heard by First-tier Tribunal Judge E M M Smith at Stoke on Trent on the 21st of December 2016 and dismissed in a decision promulgated on the 3rd of January 2017. In the decision the Judge did not question that the Appellant arrived on a visit visa in 1994. The Appellant had called 2 live witnesses who gave evidence on his behalf and relied on his passports showing his entry to the UK but no other stamps and letters of support.
3. In paragraph 19 of the decision the Judge discussed the evidence of Mr Friend who the Appellant had lived with when in the UK between 1996 and 2008 when the Appellant went to live with his now former partner. From the discussion of the evidence of Mr Friend the Judge

clearly took a dim view of his evidence and found that that his evidence was unreliable and unhelpful. In paragraph 22 the Judge found that the evidence of Mr Friend did not support the Appellant's claim to have lived in the UK continuously without absences in excess of 6 months. The Appellant's former partner could only give evidence from 2008 to 2013. The Judge found that the Appellant had not shown continuous residence as required and had not shown that there were very significant obstacles to his reintegration into Malaysia.

4. The grounds of application argue that the decision is flawed as it is argued that the Judge had not considered the Appellant's passport or the letters that had been submitted in support of the application. Permission to appeal was granted by Upper Tribunal Judge Rintoul on the basis that it was arguable that the Judge had failed to have regard to passports that had been produced that covered the periods before and after the Appellant's entry to the UK.
5. For the hearing the Appellant's representative provided a skeleton argument which was relied on by him in addition to the brief oral submissions that were made. In submissions Mr McCready observed that there were no entry or exit stamps for the passport after 1994, 2 years before the start of the 17 year period identified by Judge Smith. I observed that not all passports are stamped, in reply it was said that the Judge simply had not considered the stamps and if he did not attach weight to them he should have given reasons. The same applied to the letters provided.
6. For the Home Office it was observed that the burden was on the Appellant and there was a paucity of documentary evidence. Mr Friend had been found to be unhelpful and unreliable and his evidence rejected. The Judge would have been aware that the passports did not determine residence in the UK. He could not have used his lawful passport to leave and re-enter the UK and there are other means of getting in and out of the country without going through lawful channels. All the passports did show was that the Appellant entered the UK in 1994 and was in the UK for the renewal in 2012, it did not follow that he was in the UK at all times in between. The Judge rejected the oral evidence and the passports did not help. It was not a case where the evidence had been disregarded because the Appellant had overstayed it was that the evidence relied on was inadequate.
7. In reply it was submitted that the Judge had accepted that the Appellant had lived with Mr Friend as stated and that his evidence relating to the Appellant's day to day activities had been rejected. He accepted that the Appellant lived there and that covered 17 years. The Judge was under a duty to give reasons and there was no clear finding.
8. The letters submitted in support were decidedly brief giving almost no detail and comprising of assertions. None spoke of having known the Appellant before 2000. Given the approach of the Judge to the live evidence that he had and the very limited contents of the supporting letters it is difficult to what difference they made to the Appellant's case. They did not give any real information and do not explain how it the various writers could assert that the Appellant had been in the UK as required. As the letters only applied to events after 2000 their application would have been of limited use anyway. The Judge clearly regarded the evidence overall as inadequate and explicit reference to the letters was not required.
9. Taken at their height the passports showed that the Appellant entered the UK in 1994 and that he was present in the UK to renew the passport in 2012. Clearly if the Appellant left the UK and then returned via the usual commercial routes the first passport could not have been used as re-entry would have been refused at whatever location the Appellant sought to enter. The passports did not show that the Appellant had been in the UK continuously, only that the date of entry and the date of renewal, beyond that the passports added nothing to the Appellant's case.

10. The grounds based on the passports is superficially attractive but overlooks the limited nature of the evidence that the passports and the stamps could provide. Within the decision the Judge did not question the passports reliability in terms of what was shown on their face. The point of the appeal was whether the Appellant had provided sufficient evidence to show continuous presence and for that the Judge was looking for reliable supporting evidence.
11. The focus of the Judge's analysis was to look for evidence that showed that he had actually been in the UK since 1994. There was none of the evidence that can be provided in cases such as these, evidence of registration with a GP, photographs and the like and so the Judge concentrated on the oral evidence of those called in support of the Appellant. The reasons given for rejecting their evidence were justified and accordingly whilst there may have been times since 1994 when the Appellant could show he had been in the UK the Judge was entitled to find that the Appellant had not shown that he had been here continuously as required.
12. Read as a whole and without taking any aspect out of context the decision was open to the Judge for the reasons given and there is no error of law. Accordingly the decision of Judge Smith stands as the disposal of this appeal.

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: 12th March 2018