



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Extempore

Case No: UI-2023-000849

First-tier Tribunal Nos:
HU/52218/2022
IA/03452/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 23 July 2023

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

JAGMOHAN SINGH GILL
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Sharma, Counsel, instructed by Optima Law Solicitors Ltd

For the Respondent: Ms S Lecointe, Senior Home Office Presenting Officer

Heard at Field House on 31 May 2023

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Dempster promulgated on 2 January 2023 dismissing his appeal against a decision of the Secretary of State to refuse to grant him leave to remain in the United Kingdom on the basis of long residence and to refuse his human rights claim.

2. The core of the appellant's case is that he entered the United Kingdom on 3 October 2001 and has remained here ever since, accruing twenty years' continuous residence. The Secretary of State did not accept that that was the case although it was accepted that he had arrived here in 2001. It was also accepted that he had been here since approximately late 2012.
3. The appellant attended the hearing which was held remotely with the assistance of an interpreter. He also had the benefit of a psychologist's report with him and a bundle of material. In addition and materially to the facts of this appeal, several witnesses were called on his behalf to testify to the fact that they had known him for significant periods of the period not accepted and, as it happens subsequent to that, as evidence that he had not left the country.
4. The judge, in short, did not accept that the appellant had been continuously resident from 2001 until the period which was not in dispute, thus he did not meet the requirements of the relevant Immigration Rules. The judge directed herself as to the need to take a structured approach at paragraph 41, and set out at paragraphs 42 and 43 reasons why she did not accept to a significant extent the evidence of Dr Kaur. She then at paragraph 44 went on to consider the evidence of the appellant's friends doubting their evidence, and concluding at paragraph 46 that the only evidence relied upon by the appellant, in reality, consisted of witnesses who said, simply, that he had been living continuously since they met him, adding that given findings as to the very little weight to be attached to the evidence of Dr Kaur and the other witnesses she had looked to see if there was other evidence probative of the issue, finding that there were not, noting in absence various documents.
5. The appellant sought permission to appeal on two principal grounds. First, that the judge had failed in her approach to the evidence of the witnesses given first that there was no challenge to their evidence contrary to the principles set out in Deepak Fertilizers & Others v Davy McKee [2002] EWCA Civ 1396 and that accordingly it was not open to the respondent to argue that their evidence was not truthful and further that the requirements of departing from the general rule, that is where the account given was of an incredible romancing character in the absence of cross-examination, was not applicable here.
6. The second ground is that the judge took issues against the witnesses without giving adequate notice to the appellant or his Counsel, in particular making findings that it was inconceivable that the witnesses would not have known of his residence in Newport at one point and to hold other facts set out in the documents against the witnesses without those documents being put to them to consider.
7. It is, I consider, sensible to begin any analysis with the reference to the decision of the Court of Appeal in Deepak Fertilizers. At paragraph 49 the court said this:

“The general rule in adversarial proceedings, as between the parties, is that one party should not be entitled to impugn the evidence of another party’s witness if he has not asked appropriate questions enabling the witness to deal with the criticisms that are being made”.

Phipson on Evidence is cited as authority for that proposition.

8. In this case in the absence of much documentary evidence which the judge accepted was normal in cases of this sort, the evidence of the witnesses was crucial. As the judge noted at paragraph 44, none of the witnesses are directly challenged as to their veracity and she is able to assess what weight should be attached to the evidence. She found the evidence to be less than convincing. The core of her reasoning for disbelieving the appellant is set out in the sentence which begins and continues:

“However none of these witnesses mentioned that the appellant at one stage was living in Newport. At p. 41 there was a letter to the appellant at 110 Newport Road in Cwmnarn, Newport directing him to report to Newport Central Police Station on 1 August 2013. A letter sent by the Home Office to the appellant dated 15 January 2014 was also sent to the same Newport address and a further letter to that address stating that the appellant had failed to report as directed on 3 February 2014”.

9. There are two points to be made about this. First is there is no indication that these documents were put to the witnesses, and second, there would not necessarily appear to be any reason why they should have given evidence about this point. It was not in dispute that the appellant was present in the United Kingdom at the time he is said to have been living in Newport. It is also correct that the other documents that the judge relies upon for impugning the weight to be attached to the witnesses’ evidence at paragraph 45 was also not put to them, nor indeed was what Dr Kaur had said about him only knowing two or three friends put to them. Again, these were important matters to be put to the witnesses if it was sought to attach weight to that.
10. I bear in mind in this context that at paragraph 40 the judge recorded that Mr Sharma who appeared for the appellant below as he appears before me today had submitted it was inappropriate for the respondent to challenge the evidence of witnesses only in submissions. That is not a point with which the judge deals adequately.
11. Whilst I note Ms Lecointe’s submissions that the errors are not material, I disagree. It is sufficiently clear from this decision that the judge based her decision on the lack of continuity of residence primarily on the evidence or the lack of weight to be attached to the evidence of the witnesses. For the reasons I have already given her doing so was based on a flawed basis. She has in effect misdirected herself as to the law and the proper approach to be adopted in assessing evidence where it is not challenged

or is improperly challenged in cross-examination and failed to comply with the principles set out in Deepak Fertilizers. I bear in mind in reaching this conclusion what was said by the Supreme Court in HA (Iraq) that a superior Tribunal should be loath to interfere with findings of fact made by an inferior specialist Tribunal but in this case it is sufficiently clear that the judge misdirected herself as to the law as to how she should approach the evidence of the witnesses. It is not just an argument about weight, it goes to the core of what makes a hearing a fair hearing and accordingly I am satisfied that the decision in this case did involve the making of an error of law in that the judge's assessment of the weight to be attached to the witnesses was flawed.

12. Accordingly for these reasons I find that the decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

Re-making of the First-tier Tribunal Decision

13. In re-making this decision I have had and borne in mind the submissions from both Mr Sharma and Ms Lecointe as to whether it is appropriate for the Upper Tribunal to do so. I am satisfied that it is appropriate for it to do so given that the evidence is clear, that is in terms of the witnesses who were called to testify as to how long they had known the appellant and the addresses at which he had lived and how often they had seen him in the United Kingdom covering the period from 2001 onwards. No purpose is in my view served by seeking to hear further evidence from the witnesses, whose evidence was not properly challenged before the First-tier Tribunal for the reasons I have already given in my decision relating to error of law.
14. It is, I consider, essential to focus on what is in issue in this case which is, as is set out in the skeleton argument from Mr Sharma, whether the appellant was resident in the United Kingdom continuously from 2001 until 2021. Three different periods of potential absence are identified - 2005 to 2007, 2009 to 2012 and an additional period of 2017 to 2018 which was at the hearing before the First-tier Tribunal accepted no longer to be in issue.
15. The evidence of the witnesses is set out in their statements and it is also summarised in Mr Sharma's skeleton argument at paragraphs 10 to 13 and it is also set out in the decision of the First-tier Tribunal at paragraphs 23 onwards. Were it just the appellant's own evidence it is difficult to see how that would be sufficient to show a continuity of residence for the whole period as required but in this case there is the consistent evidence of several witnesses who testify to the fact that they have known the appellant for an extended period. They have given details of how often they were in contact with him either through attendance at events at the Gurdwara, at festivals, daily contact either in person or telephone in varying degrees and over different periods.
16. The evidence of the appellant's wife is not evidence which is capable of bearing much weight. That is because she came to know him in 2015 and

the periods in dispute are significantly before that. In effect she is simply repeating what she has believed and what she has been told.

17. That is not the case with the other witnesses. Mr Gurdashan Singh Sidhu gave evidence setting out where the appellant had lived and where he had lived and that they had known each other since he arrived in the United Kingdom on 3 October 2001. The reference to 3 October 2021 at paragraph 24 of the First-tier Tribunal's decision is a clear typographical error. It is evident that it is 2001 from the rest of the context of the decision. It is clear also that Mr Sidhu was in regular contact, as set out in paragraph 26. It is also confirmed by the evidence of Mrs Harjeet Kaur Sidhu, the witness's wife, who also said that the appellant and his family would regularly visit them and they would celebrate together.
18. Ms Parmjit Kaur also gave evidence to having known the appellant from 2009 onwards, and the evidence of Mr Gursewak Singh set out at paragraph 30 of the decision of the First-tier Tribunal which was not subject to cross-examination confirms the appellant's presence since 2005. Similarly the evidence of Amandeep Singh Buttar referred to at paragraph 31 of the decision which was not the subject of much cross-examination confirms the appellant's presence.
19. There are also evidence in the forms of letters referred to at paragraphs 32 and 33 of the decision which it is difficult to attach weight to as the authors of those letters were not present before the First-tier Tribunal. In effect, this evidence is unchallenged.
20. Ms Lecointe for the Secretary of State relies on the decision and review adduced from the Secretary of State which I take into account in reaching my decision. She submits that there is no confirmatory evidence, for example photographs or other documents showing presence of the various witnesses and the appellant and/or his wife at various different events and festivities and that these would be expected.
21. I am unable to accept that submission as bearing weight. It is not something that was put to any of the witnesses or to the appellant during their oral evidence. It is the case, as the judge noted, that there is a remarkable similarity in the evidence but again that is not something which necessarily is capable of bearing weight and is not a matter put to the witnesses. The fact that people can recall events when asked to do so is not necessarily suspicious or evidence of collusion; it may simply be the case that, for example, they consulted diaries or some other method that they had records of in compiling their witness statement. Were it the case that there was simply one witness who was confirming the appellant's presence in the United Kingdom some doubt could be raised but that is not the case here. There is no requirement for documentary evidence and what there is here is a detailed factual matrix of the appellant's presence in the United Kingdom as described by several witnesses whose evidence has not effectively been challenged in any proper way by the Secretary of State in what is an adversarial process. I fully accept that it is often the

case where someone has lived in the United Kingdom irregularly that there is a lack of documentary evidence because of that and that is something which the judge below took note of. I also take note of that.

22. Viewing the evidence as a whole I am satisfied, given that weight can properly be attached to the evidence of the witnesses for the reasons I have already given, including their consistency and the lack of challenge and that taken together with the appellant's evidence they confirm on the balance of probabilities that he has been present in the United Kingdom continuously since 3 October 2001.
23. Accordingly and on that basis he meets the requirements of the Immigration Rules. As he meets the requirements of the Immigration Rules it follows in light of the relevant case law that there is no public interest in his removal and so I allow the appeal on the basis that his removal to the United Kingdom would as he meets the requirements of the Immigration Rules be a disproportionate interference with his right for respect for his private and family life.
24. Accordingly the appeal is allowed on human rights grounds.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. I remake the decision by allowing the appeal on Human Rights Grounds.

Signed

Date: 13 July 2023

Jeremy K H Rintoul

Judge of the Upper Tribunal