



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003345
First-tier Tribunal Nos:
HU/55977/2022
LH/01749/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 16 October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE B KEITH

Between

JAMIL BOKTH
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Karim, Counsel, instructed by Kalam Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Heard at Field House on 27 September 2023

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Joshi (“the Judge”) dated 31 May 2023 in which the Judge refused the appeal of Mr Jamil Bokth against the Secretary of State for the Home Department (“SSH”) in relation to his application under private and family life on the basis that the appellant had been in the United Kingdom for twenty years.
2. Mr Bokth is a citizen of Bangladesh born on 13 July 1981. He claimed to have illegally entered the UK in 2002 and overstayed since that point. There is some evidence that he was found as an overstayer in 2007. He made an application in 2012 under the Human Rights Act. That application was considered and refused by the Home Office by a notice dated 13 August 2013 with no right of appeal. Further applications were made on the same basis in January, February, July and November 2014 which were all refused with no right of appeal. On 18 October

2021 Mr Bokth applied for a fee waiver which was accepted on 2 December 2021. On 8 December 2021 a further application was made under family and private life which was considered and refused by a notice dated 28 August 2022.

3. The appellant appeals with permission of the First-tier Tribunal against the decision of First-tier Tribunal Judge Joshi.
4. The central feature of this case is whether or not the appellant had been in the United Kingdom for twenty years and therefore satisfied the requirements under paragraph 276ADE(1)(iii).
5. Ground 1 is that the judge made an error of law by using an adverse credibility finding against the appellant in order to tarnish the further witness evidence before the judge. Mr Karim in his helpful submissions has explained that that error is fundamental to the case and as a result there is an error of law.
6. The judge deals with the further witnesses which are said to support the appellant's position at paragraph 52 of the judgment. The judge says:

"52. However, I find that those who have referenced 20 years are closely associated to the Appellant either as close friends or family members. Considering the credibility concerns that I have, I attach less weight to this evidence".

7. That is the first part of [52] and the part that Mr Karim complains of. His submission is that that initial finding at [52] infects the rest of the reasoning which follows in the paragraph which I now quote. The judge then went on to say:

"... The Appellant's brother-in-law Mr Ahmed stated in his witness statement that he has known the Appellant for 20 years but does not expressly state how long the Appellant has been in the United Kingdom or exactly when he entered. The Appellant's sister, Mrs Khanom adds that the Appellant has visited her in the United Kingdom since 2002. The Appellant's niece, Ms Khanom, stated in her statement that she has known the Appellant her entire life (born in 2001) but does not expressly state that the Appellant arrived in 2002. The Appellant's friend Mr Ahmed stated that the Appellant lived with him for 17 years until 2020 but due to his own financial problems he could no longer support him. Mr Uddin, the Appellant's friend, writing in 2022 stated that he has known the Appellant for 15 years which takes their friendship back to 2007 and not before. The Appellant's friend, Mr Talukdar, stated that he has been friends with the Appellant since 2002 having met through mutual acquaintances. I have had regard to the other supporting letters at pages 60 to 81 of the appeal bundle. I note that most of them do not confirm that they have known the Appellant since 2002 or that he arrived then".

8. The judge then goes on as a result of those findings to conclude at paragraph 54 of the determination as follows:

"54. For the reasons as set out above, I find that the Appellant has been continuously resident in the United Kingdom since February or March

2007. I therefore dismiss the Appellant's claim under Paragraph 276ADE(1)(iii) of the Immigration Rules".

9. In my judgment there is no error of law in relation to ground 1. Mr Karim states that the Secretary of State did not challenge the witness evidence, did not challenge the credibility of the witnesses and that there was no cross-examination of the witnesses, in addition that the judge was wrong because the judge should have made credibility findings against those witnesses if they were going to reject the evidence. He refers me to the case of **MK (duty to give reasons) Pakistan [2013] UKUT 641 (IAC)** which states in the headnote at paragraph 2:

"(2) If a tribunal finds oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it is necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight is unlikely to satisfy the requirement to give reasons".

10. In my judgment the judge has not infected the reasoning by the credibility finding of the Appellant. The judge has looked at each and every witness statement and tried to discern whether or not there is in fact any evidence that the Appellant was in the United Kingdom from 2002. I have been taken to every witness statement by Mr Karim who has helpfully taken me through all of the evidence. There is no witness that says directly that the Appellant was in the United Kingdom since 2002 and Mr Karim says that the Judge should have taken that as an inference that where somebody said they have known him since 2002 that is enough to say they must have met him in the United Kingdom and therefore he must have been here 20 years.

11. In my judgment the witnesses have carefully worded their witness statements so as not to make any concession but not to make any positive case. There was no need for the judge to make an adverse credibility finding against any or all of the individuals because none of them in fact supported the Appellant's case that he had been here since 2002. The judge does say in relation to Mr Ahmed that the appellant had lived with him for seventeen years until 2020 but that is in my judgment not material because that is not what Mr Ahmed says in his witness statement dated 2023 and in fact says it is seventeen years from then (or 2006/2007). In my judgment there is therefore no supporting evidence from any of the witnesses that shows that the appellant has been present in the United Kingdom since 2002 and therefore the judge was not only right but it was open to the judge to find that there was no evidence to support that case. Given that the judge found that the Appellant was not credible there was in fact no evidence that could have been found in relation to that approach that would have shown the appellant had been here for twenty years. Accordingly, I find no error of law in relation to ground 1.

12. Ground 2 is that the First-tier Tribunal Judge overlooked material evidence. Mr Karim has referred me to two pieces of evidence. The judge at paragraph 44 of the determination cites what the Appellant said in interview:

"44. The Appellant stated in his interview on the 10th of December 2007 (at page 281 of the appeal bundle) after having been encountered by UKBA that he arrived in the United Kingdom in February or March 2007

from Bangladesh to London Heathrow via Dubai. He explained that he paid a broker £6,000. He accepted he was in the United Kingdom illegally”.

13. Mr Karim points me to two parts of a Subject Access Request and the Home Office’s CID notes. The first piece of evidence he says that the judge has overlooked is that in relation to an application made on 9 July 2014 the note states that “the applicant claims to have entered the UK in February 2002”. I note that there is no determination in the CID note of the truth of that statement. The second piece of evidence I am referred to is the CID note dated 27 February 2014 which states “*Has the applicant lived in the UK for twenty years?. No. The applicant claimed to have entered in 2002 and so had only lived here for a maximum of twelve years at the time of the app*”. Mr Karim submits that particularly that second piece of evidence is supportive of the fact that the Secretary of State accepted in 2014 that the appellant had been present in the United Kingdom for twelve years and thus had entered the UK in 2002.
14. In my judgment that evidence does not show that. The evidence is simply a recording of what the Appellant said, it is entirely self-serving and it does not go to prove the truth of the content. Even so in combination with all of the evidence in this case that was looked at by examining ground 1, I cannot see how those two pieces of evidence could have tipped the balance in the Appellant’s favour. They are of no assistance whatsoever to any Tribunal making a decision in this case and so in my judgment ground 2 fails because there is no error of law because there was no overlooking of material evidence because the evidence was neither material nor helpful to a decision making Tribunal.
15. Therefore there is no error of law in relation to ground 1 or ground 2 and I dismiss the appeal.

Disposal

16. The appeal is dismissed.

Ben Keith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 October 2023