



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003907

First-tier Tribunal No: HU/57723/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 8th of December 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTSON

Between

BALKAR SINGH
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Ahmed, Counsel

For the Respondent: Mrs Arif, a Senior Home Office Presenting Officer.

Heard at Birmingham Civil Justice Centre on 14 November 2023

DECISION AND REASONS

1. The appeal before me is that of the Appellant.
2. The Appellant appeals with permission a decision of First-tier Tribunal Judge Row ('the Judge'), promulgated on 13 August 2023, in which the Judge dismissed the Appellant's appeal against the refusal of the Respondent to grant him leave to remain pursuant to the provisions of paragraph 276ADE(1)(iii) of the Immigration Rules. Permission to appeal was granted by First-tier Tribunal Judge SPJ Buchanan.
3. The grounds for permission to appeal are lengthy, and are summed up in the grant of permission as follows:

"2. The Grounds of Appeal [GOA] contend that the FTT] arguably erred in law because (1) fundamental error in relation to date of appellant's entry to UK; (2) failure to take into account material evidence of Appellant's lawful entry

and evidence of his Indian Passports; (3) adopting an improper approach in the assessment of appellant's evidence; (4) failure to reach any clear findings on evidence of witness; (5) failure to take into consideration other relevant evidence"

4. Judge Buchanan granted permission on each of the grounds on the basis that each ground was arguable.
5. At the hearing, I notified the parties that I had read the decision of Judge Row, the full grounds of application and the grant of permission, so that there was no need to repeat what was already before me. There was no Rule 24 response, and I asked Mrs Arif if that was to be rectified. She submitted that the Respondent accepted that there were material errors of law in the decision, and when asked again if this concession was in relation to each of the grounds of application she repeated that the Respondent accepted that there were errors of law as identified. On the basis of these concessions, Mr Ahmed had no further submissions to make.

Discussion and analysis

6. I will go through each of the grounds as identified in the grounds of application. As to ground 1 it is recorded in the reasons for refusal letter (RL), dated 19 October 2022, that the Appellant entered the UK on 26 June 2001 on a visit visa. It is submitted in the grounds that the uncontested evidence is that the Appellant entered the UK as a visitor on 26 June 2001, with leave valid until 13 December 2001, and that in finding at [14] that the GP records indicated to him that 2005 'is when he came to the UK', the Judge failed to take account of material evidence of the Appellant's lawful entry as evidenced by his Indian passport. The Respondent accepted that the Judge had so erred, and having considered the RL and the Appellant's passport entries, I find that this error is made out.
7. In ground 2, issue is taken with the Judge's findings at paras [15 - 17]. The Judge stated:

"15. It was argued on the appellant's behalf that his passport showed that he entered the United Kingdom on 26 June 2001. There are no entries on the passport showing that he had left the United Kingdom after that date. This is evidence that he must have been in the United Kingdom.

16. I do not accept that argument. Illegal entry to, and egress from, the United Kingdom does not seem to be a problem for those who wish to do it.

17. It is also possible for the appellant to leave United Kingdom to visit the Republic of Ireland without a passport. He could visit Jersey, Guernsey, and the Isle of Man. No passport is required to visit these states. They are not part of the United Kingdom."
8. It is submitted that in making his findings at [15 - 17], the Judge failed to (i) take into account material evidence of the Appellant's lawful entry by way of the evidence contained in his Indian passport, and improperly equated the Appellant with the class of persons who entered the UK illegally, when he did not; (ii) in stating that the Appellant could have gone to visit 'Jersey, Guernsey, and the Isle of Man' where no passport is required, the Judge erred because

there was no evidence to support such an inference (the Appellant had no connections or ties to these territories); and (iii) the Appellant's travel documents (his current and expired Indian passports) went towards supporting the Appellant's claim that he had resided in the UK for a continuous period of 20 years. As to (i), it is clear that the Appellant did not enter the UK illegally; the Respondent does not contend otherwise, but it is unclear from the decision at [10] whether the Judge is referring to the Appellant's unlawful (and therefore illegal) overstaying rather than that the Appellant's entry was illegal. However, the fact remains that not having accepted that the Appellant's passport entries, as accepted by the Respondent, show that he entered the UK in June 2001, and finding that he entered the UK in 2005, that it is more likely than not to show that the Judge was commenting on the Appellant's entry as being illegal, which is an error of law, as conceded by Mrs Arif.

9. As to (ii) and (iii), permission on this point was granted subject to confirmation that submissions were made to the Judge in the terms set out in the application, that is that the submissions confirmed that lack of entries in the travel documents, together with other evidence, goes towards showing that the Appellant did not leave the UK, after entry; rather than showing that lack of entries in the Appellant's passports since he arrived, "must" result in the conclusion that the Appellant had not left the UK since he arrived. Nothing is recorded in the decision as to what submissions were made to the Judge, and the skeleton argument before the Judge refers to the travel documents as part of the evidence before the Judge for the purposes of establishing that the Appellant had been in the UK for a continuous period of 20 years, together with evidence from relatives and friends. However, the Judge's comment that there are places to which the Appellant could have gone without the need for a passport is not itself an error of law (although it was conceded by Mrs Arif and I will not go behind the concession). It would only be a material error of law if it is coupled with a failure to properly consider and give adequate reasons for rejection of evidence that was put before the Judge to establish 20 years of continuous residence (as to which see paras 10 - 11, and 13).
10. There was other evidence before the Judge, namely the evidence of Mr Jajit Singh. At ground 4, it is stated that no issue was taken with the evidence of the witness, who had provided a witness statement and was subject to cross-examination, that no issue was taken at the hearing with the evidence of the witness and that the Judge was obliged to state what parts of the evidence was accepted, what was rejected and what he could not reach a finding on. Permission was granted on the basis that it was arguable that the Judge 'fails to give adequate reasons for rejecting evidence of the witness'.
11. Having stated that because of the Appellant's immigration history, "which is one of illegality and overstaying, I am entitled to regard anything he says on the subject of his immigration status with circumspection" [10], the Judge goes on to say that "there is no such reason to doubt the evidence of Mr Jagjit Singh but no reason to accept it either. The appellant wishes to demonstrate that he has been in the United Kingdom since 2001. It is not unlikely that he would be able to persuade a friend to say that he has been". Reference is made to the evidence of Mr Singh at [9] and [11]. No reasons have been given as to why his evidence is rejected other than "It is not unlikely" that the Appellant "would be able to persuade a friend to say that he has been" in the UK since 2001. No reasons are given to establish what it was about the evidence of Mr Singh that persuaded the Judge that his evidence was unreliable, other than that he was

the friend of the Appellant. I find that adequate reasons were not given for rejection of Mr J Singh's evidence and that his evidence is capable of making a material difference to the outcome of the appeal. This is particularly the case when Mr Singh stated in his witness statement that he had known the Appellant since 2001, the date at which the Appellant states he entered the UK, as evidenced by the entries in his passport and as accepted by the Respondent. Again, I do not go behind the concession made by Mrs Arif at the beginning of the hearing.

12. As to ground 5, it is submitted that the Judge failed to take into account other relevant evidence because other friends had provided witness statements, although they did not attend the hearing, and the Judge rejected this evidence. He stated, at [12] that "Their evidence could not be tested. Their statements could have been made by anybody. I put little weight on that evidence for that reason". Whilst there is some basis for submitting that "Their statements could have been made by anybody" is not reasoned because there is no reference to the content of their witness statements, the main reason for the Judge putting little weight on the evidence was that it could not be tested, and I am not persuaded that this in itself is a material error of law. However, it was again the subject of a concession by Mrs Arif and I do not seek to go behind the concession.
13. At ground 3, the author of the grounds takes issue with the Judge's statement at [10] that "In view of the appellant's immigration history, which is one of illegality and overstaying, I am entitled to regard anything which he says on the subject of his immigration status with circumspection". It is submitted that the Judge's approach to the assessment of 20 years continuous residence is flawed because para 276ADE(1)(iii) contains no distinction between lawful and unlawful residence (illegal entry/overstaying) and therefore the Judge was wrong to take the Appellant's immigration history as a starting point and use this factor for treating all aspects of his evidence "with circumspection". As stated in the grant of application, "A history of illegality and history of overstaying may not be so material in an assessment of evidence relating to living continuously in the UK for 20 years as to justify circumspection on all evidence". Treating evidence with circumspection would not necessarily result in a material error of law if each piece of evidence was considered, and reasons given for why some pieces of evidence were accepted and why others were rejected. However, the decision read as a whole, establishes that there is little analysis of the evidence given by the Appellant in his witness statement, or consideration whether there are discrepancies between his witness statement and that of his witness, Mr Singh. I find, as conceded by Mrs Arif in her general concession, that there is an error in the approach of the Judge to the assessment of evidence.
14. It was the totality of the errors of law identified that lead me to conclude, as conceded by Mrs Arif, that there were errors of law within the decision capable of making a material difference to the outcome of the appeal. I put to the parties the terms of Practice Direction 7.2 of the practice directions in relation to whether to rehear the appeal in the Upper Tribunal or to remit to the First-tier tribunal. Mr Ahmed submitted that it should be remitted because of the nature and extent of the fact findings to be made, and that no findings of fact should be preserved. Mrs Arif confirmed that she and Mr Ahmed had conferred before the hearing commenced and were both of the view that it should be remitted to the First-tier Tribunal.

15. Having considered their submissions, the exceptions in 7(2) and Begum [2023] UKUT 46 (IAC), and given the Respondent's concession, there are no findings of fact that can be preserved. The extent of the fact-finding necessary means that it is appropriate to remit this appeal to be re-heard in the First-tier Tribunal.

Notice of Decision

16. Material legal error is made out in the decision of the First-tier Tribunal. The decision is set aside.

17. The appeal is remitted to the First-tier Tribunal to be reheard with no findings of fact preserved, to be relisted before any Judge other than Judge Row.

M Robertson

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

Date: 27 November 2023