IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003640

First-tier Tribunal No: HU/53867/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

17th January 2024

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

JAGBINDER SINGH
(no anonymity order requested or made)

Appellant

and

S S H D

Respondent

For the Appellant: Mr A Hussain, of Legal & Legal, Solicitors
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

Heard at Edinburgh on 10 January 2024

DECISION AND REASONS

1. FtT Judge Cowx dismissed the appellant's appeal by a decision promulgated on 14 July 2023.

2. The appellant sought permission to appeal to the UT on grounds set out in 10 paragraphs in the attachment to his application.

3. Paragraph 1 is introductory.

4. Paragraphs 2, 3, 4, & 6 are a series of disagreements with the weight given by the tribunal to various aspects of the evidence.

5. Paragraph 5 vaguely dissents on the extent of obstacles the appellant might encounter in (re)integrating in India. Paragraphs 7 and 8 complain of lack of reasoning for the outcome in terms of private life in the UK. This aspect was not further advanced at the hearing before me, which concentrated on the findings about how long the appellant has been in the UK.

6. The case on private life, short of showing the 20 years residence required by the rule, was weak. The grounds and submissions show no error in that respect.

7. Paragraphs 9 and 10 seek reconsideration and say that the outcome, giving "proper consideration and weight" to the evidence, should have been in the appellant's favour.

8. FtT Judge Chowdhury granted permission on 29 August 2023: …

> (2) It is arguable the Judge made contradictory findings which was not based on the evidence. The Judge noted UA's evidence at paragraph 35 that she housed the Appellant and stated the Appellant was homeless in 2007-08. The Judge noted the president of the Glasgow Gurdwara that he had known the Appellant since 2000 (paragraph 46 refers). The Judge is not clear as to what he made of these witnesses.
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> (3) What may be a more persuasive arguable error of law is that the Judge has used the Appellant's deception in obtaining NHS services and a NI number to work in order to impugn his credibility generally. If the Appellant maintained himself by working unlawfully and had reached a point at which the Respondent 's own rules provide him a right to remain, so long as it was not undesirable in the public interest, that he should be allowed to do so; see *ZH (Bangladesh)* [2009] EWCA Civ 8. The 20-year long residence rule is, by definition, applicable to those who have been guilty of some breach of immigration controls. To use his deception to obtain work (and arguably to access to NHS services in 2010) as a comprehensive denunciation of the Appellant and his witnesses is arguably not balanced and not justified (see paragraph 72 in particular).

9. The grant is principally on a matter not raised in the grounds, which is perhaps not at the level of [26] of the *UT and FtT Joint Presidential Guidance 2019 no 1: permission to appeal.* However, permission having been given, the point was there to be pursued.

10. The appellant in *ZH* had applied on long residence grounds under the former 14-year rule. His case involved questions of whether it would be undesirable to grant leave due to issues of "civic virtue" such as working unlawfully, not paying tax and national insurance contributions, and the respondent's policy guidance, in relation to that rule, on an appellant's "*Personal history, including character, conduct, associations and employment record".*

11. The present case is different. The question was not, as in *ZH*, whether a person who had been here for the period required by the rules was personally suitable for a grant of leave. The live issue was whether the appellant has lived in the UK only since 2010 (as the respondent accepted) or since 2000 (his first account) or since 2002 (his claim to the tribunal).

12. The applicant began by claiming to have been here for 20 years, by the date of his application, having arrived in 2000. It was when the respondent pointed out the renewal of his passport in India in 2002 that he varied his account to having re-entered in that year and remained since. The tribunal was obviously entitled to take that change of stance as adverse to his credibility.

13. The tribunal took the appellant's disregard of immigration law, false representations to the NHS and DWP, and so on, not as character issues going to his suitability for leave but as matters adverse to his general credibility. There may be a need for caution, in that practically all cases of this type involve such conduct, but there is no error of principle in that approach.

14. Mr Hussain did not submit that *ZH* is in the appellant's favour. I do not detect in the report any general proposition which shows error by the FtT.

15. The appellant's grounds on the evidence about length of residence are self-defeating. It may be correct, as advanced at [2], that with the passage of time witnesses could give only an approximate account, and, as at [4], that the appellant might not tell his friends he was arrested in 2010; but the absence of clear evidence of a date earlier than 2010 does not translate into positive evidence of being here for 20 years. The tribunal founded principally upon vagueness and lack of detail in declining to accept that the period spoken to by the witnesses went back as far as 2000 or 2002. That approach is not shown to be legally incorrect.

16. When arrested in 2010, the appellant is recorded as saying to the police that he had entered the UK 1 month previously. He does not deny that. He says that he lied because he thought it would be to his disadvantage to have been here for longer. That is not much of an explanation. It is a further proof of dishonesty. Before the FtT, it was an "admission against interest". It is also notable that the earliest reliable documentary evidence, from a GP, went back precisely to that period – [69]. The tribunal is not shown to have erred by taking arrival in 2010 as the more likely version.

17. The best point which emerged from the submissions for the appellant was that the FtT may have gone too far at [64, 67, & 68] in suggesting that certain witnesses might be giving fabricated rather than merely vague and unreliable evidence; but that does not translate into error in discounting that evidence.

18. The tribunal found it "more likely" that the appellant had been living in the UK for 13 years, not 20, and that he did not establish facts by which he met the requirements of paragraph 276ADE of the immigration rules, or otherwise had a right to remain in the UK. Mr Hussain has again pressed the appellant's case as far as it could be taken, but has not shown that its resolution by the FtT should be set aside for any error on a point of law.

19. The appeal to the UT is dismissed. The decision of the FtT stands.

Hugh Macleman

Judge of the Upper Tribunal
Immigration and Asylum Chamber
12 January 2024