



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2024-001722**  
**First-tier Tribunal Nos:**  
**HU/57916/2023**  
**LH/00846/2024**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 10 July 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**HARJIT SINGH**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr. P. Richardson, Counsel instructed by Adam Bernard Solicitors Ltd

For the Respondent: Mr. K. Ojo, Senior Home Office Presenting Officer

**Heard at Field House on 4 July 2024**

**DECISION AND REASONS**

1. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Quinn (the "Judge"), dated 1 March 2024, in which he dismissed the appellant's appeal against the respondent's decision to refuse to grant leave to remain on human rights grounds. The appellant is a national of India who applied on the basis of twenty years' residence in the United Kingdom.
2. Permission to appeal was granted by Upper Tribunal Judge Keith in a decision dated 19 May 2024 as follows:

"While I am very conscious of the discretion open to Judges in case management directions, it is arguable that the Judge failed to apply Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC), in considering whether the appellant was

thereby deprived of a fair hearing in refusing an adjournment application sought in order to adduce witness evidence said to be central to his claim of continuous long residence (ground (1)). Instead, the Judge referred to the matter having 'been ongoing for a long time. The Appellant and his representatives had had ample time to gather together evidence.' While those were permissible factors, the Judge arguably failed to consider the relevance of additional evidence and the impact of its absence on a fair hearing. The Judge's analysis of whether he believed or did not believe a supporting witness (para [34]) was also arguably deficient (ground (2)). While grounds (3) and (4) are weaker, I do not limit the grant of permission".

3. There was no Rule 24 response.

### **The hearing**

4. The appellant attended the hearing. I heard oral submissions from both representatives, following which I stated that I found the decision involved the making of material errors of law. I set the decision aside and remitted it to the First-tier Tribunal to be reheard.

### **Error of Law Reasons**

5. Ground 1 asserts that the Judge made a procedural error in refusing to adjourn. At [20] of the decision the Judge states:

"An application for an adjournment was made to obtain further evidence but I refused that application in the interest of justice as this matter had been ongoing for a long time. The Appellant and his representatives had had ample time to gather together evidence".

6. It was submitted at the hearing that, although not an error of law, it would have been preferable had the Judge considered this as a preliminary matter rather than halfway through his findings. I agree that this is not an error of law, but it would have been better had this been considered at the outset as a preliminary issue. Irrespective, I find that the Judge has failed to take into account all of the relevant considerations in deciding whether or not to adjourn and has failed to apply the correct test.

7. The headnote to Nwaigwe states:

"If a Tribunal refuses to accede to an adjournment request, such decision could, in principle, be erroneous in law in several respects: these include a failure to take into account all material considerations; permitting immaterial considerations to intrude; denying the party concerned a fair hearing; failing to apply the correct test; and acting irrationally. In practice, in most cases the question will be whether the refusal deprived the affected party of his right to a fair hearing. Where an adjournment refusal is challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the FtT acted reasonably. Rather, the test to be applied is that of fairness: was there any deprivation of the affected party's right to a fair hearing? See SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284".

8. I find that the Judge has only cited two matters which he has taken into account, the fact that the matter had been ongoing for a long time, and that the appellant and his representatives had had ample time to gather together evidence. It was accepted by Mr. Richardson that these were relevant considerations, but he submitted that they were not the only ones to which the Judge needed to turn his

mind. I find that the Judge has not considered the impact of failing to adjourn on the fairness of proceedings, or on the prospects of success. He has focused only on two issues and has not turned his mind to whether or not the appeal can be justly determined without the evidence for the purposes of which the application adjournment was made. The evidence which the appellant wanted to adduce was central to his appeal and material to whether or not his appeal would succeed.

9. Nwaigwe is clear that there are a number of considerations to be taken into account and I find that the Judge has not done this. He has failed to take into account all material considerations, and has failed to consider whether the refusal to adjourn would deprive the appellant of his right to a fair hearing.
10. Mr. Ojo submitted that fairness to the respondent was also a relevant consideration. This is correct and was accepted as so by Mr. Richardson. However, as Mr. Richardson pointed out, there is no indication that the Judge considered the respondent's position. I find that this failure to take into account all material matters and to apply the correct test is a material error of law which has deprived the appellant of a fair hearing.
11. Ground 2 relates to the treatment of the evidence of the witness, Mr. Singh. As set out by the Judge, Mr. Singh provided a witness statement on the day of the hearing. This witness statement is not before me now. Neither the appellant nor the respondent have a copy, and it appears it may have been handed up straight to the Judge. However, this is not material. The Judge considers this evidence at [31]. He states:

"As far as the witness Mr Singh was concerned, he had no documentary evidence to support his claim that he had known the Appellant. He merely told me that he had known him since 2001 when he worked on a building site as a young boy of 16 or 17. I was surprised that Mr Singh could remember the exact year but I was more surprised that he was only brought along to court to make a statement on the morning of the hearing".
12. This is the extent of the Judge's consideration of, and findings in relation to, the evidence of Mr. Singh. I find that his treatment of the evidence is flawed. He states that he was "surprised" by Mr. Singh's evidence, but he has made no findings as to whether this evidence was reliable. Clearly this evidence was highly material to the appellant's claim, given that the period of residence disputed by the respondent was from 2001 to 2013. I accept the submission of Mr. Richardson that it is not enough for a judge to express surprise, and that is not a finding. Further, if I am to read "I was surprised" as a rejection of the evidence I find that there are inadequate reasons for rejecting this evidence.
13. Mr. Ojo submitted that this was merely a disagreement with the findings of the Judge who did not have to provide extensive reasons. However, I find that the Judge has made no findings at all as to whether or not the evidence of Mr. Singh could be relied on. The implication from the way that he has phrased it is that he cannot place reliance on it. However, if this is the case, he has given inadequate reasons for doing so. The evidence of Mr. Singh was that he had met the appellant as a very young labourer and for that reason he had remembered the year. There is nothing intrinsically implausible about that. I find that the Judge's treatment of the evidence of Mr. Singh involves the making of a material error of law.

14. Ground 3 asserts that the Judge had failed to deal with the other written letters of support which were before him. At [17] he states:

“I was troubled by the fact that apart from Mr Singh, who appeared as a witness there was no one else who could come forward to say that they had known the Appellant.”

15. At [26] he states:

“For a considerable period of time as the Appellant approached a lengthy period of residence in the UK, he would have known that he would require some documentation at some stage and he was living amongst members of his own community. I therefore would have expected him to have received some help from his community in regularising his position.”

16. At [34] he states:

“Looking at all the evidence in the round I did not think that the Appellant had established on the balance of probabilities that he had been in the UK since 2001. If he had been here for twenty years, I would have expected him to have made friends with people in his local community and possibly with people at the Gurdwara. There were no statements from anyone like this.”

17. Contrary to the Judge’s statement at [34], there were statements in the respondent’s bundle. I was referred to pages 35, 36, 63 and 64. I find that the Judge has failed to take into account all of the evidence before him. Further, he has drawn an adverse inference from the fact that there were no such statements, thus going further than simply ignoring the evidence. I find that the failure to address this evidence amounts to a material error of law.

18. Ground 4 asserts that the Judge failed to give adequate reasons and failed to deal with the evidence before him. At [19] of the decision the Judge states:

“The Appellant also had to live somewhere and could have obtained either a tenancy agreement, or a statement from his landlord”.

19. In the respondent’s bundle at page 35 was a letter from the appellant’s former host to which the Judge had no regard. Further, the adjournment application had been made on the basis of getting further evidence from his former landlord. Mr. Richardson submitted that the Judge should have been cautious in criticising the appellant for not having that evidence, given that he had refused his adjournment application. I find there is some weight in this point.

20. Ground 4 further refers to the Judge’s treatment of the evidence relating to the GP and Capita. At [21] the Judge refers to the absence of GP evidence. He states:

“I did not find the Appellant credible on his claim that he had been here for twenty years. He produced no GP notes and I thought it was unlikely that he would have gone for twenty years without having needed to consult a Doctor”.

21. At [25] the Judge states:

“One thing that troubled me a great deal was that he claimed to have worked for Capita at one stage. They were a reputable organisation and they would not have paid him in cash. He therefore must have been paid by bank transfer or by cheque

which he would have to pay into a bank account. Income tax (even if it was emergency tax) would have been paid on those earnings. No evidence of these earnings was provided so either Mr Singh was not being truthful about working for them or he had concealed this evidence from the Tribunal”.

22. It was submitted first that the Judge had not explored whether the appellant had been ill or whether he had ever needed to go to a GP. In relation to Capita, it was speculation, and having said at [25] that this was something that troubled him a great deal, the Judge had not put this to the appellant. It was submitted that these were both material factors which could have showed the appellant as being resident in the United Kingdom. I find that the Judge’s treatment of the evidence, that of Mr. Singh, that from friends provided in the respondent’s bundle, together with adverse inferences, indicates that the Judge has not treated the appellant’s evidence holistically. I find that Ground 4 involves the making of a material error of law.
23. I find that decision involves the making of material errors of law. I find that the grounds are made out, and that the findings cannot stand. In considering whether this appeal should be retained in the Upper Tribunal or remitted to the First-tier Tribunal to be remade I have taken into account the case of Begum [2023] UKUT 46 (IAC). At headnote (1) and (2) it states:

*“(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is that the case will be retained within the Upper Tribunal for the remaking of the decision.*

*(2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal.”*

24. I have carefully considered the exceptions in 7(2)(a) and 7(2)(b). Given that the decision involves a procedural unfairness, I find that the appellant has been deprived of a fair hearing. It is therefore appropriate to remit this appeal to be reheard in the First-tier Tribunal.

### **Notice of Decision**

25. The decision of the First-tier Tribunal involves the making of material errors of law and I set the decision aside. No findings are preserved.
26. The appeal is remitted to the First-tier Tribunal for a de novo hearing.
27. The appeal is not to be listed before Judge Quinn.
28. The appellant is to confirm whether he needs an interpreter in Punjabi for the hearing.

**Kate Chamberlain**

Deputy Judge of the Upper Tribunal

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Immigration and Asylum Chamber

**9 July 2024**