Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/31101/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On the 21st August 2014	**On 28th August 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

SARABJEET SINGH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss D M Persaud, Counsel, instructed by Hartley Bain Solicitors
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by Sarabjeet Singh who had applied for leave to remain in the UK on the basis of fourteen years long residence on the basis of the Immigration Rules as they stood at the date of the 8th July 2012, his application having been made before that date and therefore being entitled to have his case considered under the old Rules rather than under Appendix FM or paragraph 276ADE both of which case into force on the 9th July 2012. His appeal was heard by First-tier Tribunal Judge Cohen at

Hatton Cross on 19 February 2014 and dismissed in a determination promulgated on the 28th February 2014.

2. Following that determination Grounds of Appeal were lodged which alleged that the Judge had conducted the hearing unfairly, that he had misdirected himself in law with regard to documentary evidence, that he had failed to set out his reasons in relation to many additional discrepancies and that was unfair because it meant that the Appellant did not know the basis of the decision against him; he had been unfair with regard to the Appellant's English language ability and that he had failed to take into account the Appellant's own evidence that he had spent seventeen years living and working within and amongst the Punjabi community.

3. It was further suggested that under the article 8 aspect he had had not dealt adequately paragraph 276ADE. He had stated erroneously that there were ties with India and had not dealt properly with article 8.

4. For the reasons I now give I find that the determination does not contain any errors, that the manner of the conduct of the hearing was not flawed, that the Appellant had a fair hearing and that the determination which was made contained reasons which were clearly open to the Judge.

5. Dealing first with the allegation of unfairness, the statement of the Appellant's representative, Mohsin Aslam, is dated the 7th March of this yeasr. He noted that at the beginning of the hearing Judge Cohen addressed the Appellant but during that introduction stated that he did not agree with the representative's skeleton argument and that in his view documentary evidence was of the utmost importance and the absence of evidence could not satisfy him that the Appellant had been in the UK.

6. The lawyer’s views were that the comments were wholly inappropriate and visibly upset the Appellant and in the course of the hearing the Judge interrupted examination-in-chief in cross-examination and was aggressive in his tone and manner. There is no evidence from the lawyer or from the Appellant that the Appellant was unable to say anything in evidence that he had wished to say or that his evidence was different from the evidence that he had intended to give. I note that he has been represented throughout by lawyers who had had ample time to prepare his case not only by obtaining his witness statement that also supporting documentary evidence and supporting evidence from witnesses who may have known the Appellant and might be able to provide information with regard to the time that he had had in the UK.

7. The Judge replied, and I have a note dated the 22nd July 2014. He noted that there had been in fact no complaint about his behaviour to the Resident Judge at Hatton Cross and it follows obviously therefore no application to the First-tier that the hearing should simply be reheard by somebody else. He confirms that he had stated to the Appellant and the representative that in long residence cases documentation was of great importance as one would expect someone who had resided in the UK for

fourteen years to have gathered significant documentation during that time, although I recognise that for someone residing in the UK legally documentation may be more difficult to produce. He addressed both the Appellant and the representatives. Obviously if there was a disagreement then that would lead to an appeal.

8. This is an area where the complaints apply the other way. It has been a ground of appeal before the Upper Tribunal, not in this case, I note, that Judges did not indicate what was on their mind and so findings made against an Appellant were unfair because the Appellant did not know the case that he was being expected to put. Equally Judges are entitled to intervene in questioning where an Appellant is either not answering questions or further information is required, or where the questioning is itself inadequate and the Judge requires a particular point to be clarified.

9. The Judge's view was that the Appellant was frequently evasive and in the determination described the attitude of one witness as being belligerent. Those are observations that a Judge is entitled to make and is also entitled to apply when assessing the weight to be given to the evidence that he has heard.

10. The complaint is that the Appellant was unsettled. It does not show that he could not put his case or that he did not put his case and it does not show that the Judge had prejudged the issues in question. Accordingly that complaint has no merit and I have no hesitation in rejecting it.

11. The Appellant gave evidence in Punjabi although he has an ESOL English language certificate and the Judge sought his own assessment. That is not in fact inherently unfair. For somebody who claims to have lived in the UK for many many years, seventeen years now if true, and claims to have no cultural ties whatsoever with his country of origin. His language ability is fundamental. Had that been the only reason in the case then perhaps this might have been different but it was a part of the evidence that the Judge was entitled to take into account and did.

12. The Appellant's evidence was that he had been in the UK for seventeen years but it required support. It is obvious from paragraphs 19 onwards where the Judge reminded himself that the burden was on the Appellant that the Appellant's credibility was rejected. Paragraph 22 gives a good example of discrepancies that the Judge found and I quote from the middle of that paragraph

"The Appellant claimed that he lived in the extension and did not know who lived in the mail house despite having claimed to have lived there for five years which I find to be implausible. The Appellant claimed that two of the witness's children were married and he had not seen them attending university during the time he was at the witness's house whereas the witness indicated that one of his children were married and the other two attending university whilst the Appellant was living with him. The Appellant stated that he never lived with the witness's children with the

witness indicated that his children would come home during university vacations."

13. There is no suggestion that that record of the evidence is inaccurate. It is a clear discrepancy which the Judge was entitled to take into account and the Judge was entitled to say as he went on

"There were multiple other discrepancies in the evidence of the witness and the Appellant and in the light of the same I find that the Appellant and witness are other than witnesses of truth."

14. In paragraph 23 he went on to record the witness's claimed ability to remember the exact date in 1997 that the Appellant started to reside with him and when challenged about other dates became "quite belligerent".

15. The Judge was entitled to reject their evidence. The fact that there were clear differences between with they had said was something that the Judge had to consider and either to reconcile, to either give reasons for finding it to be not important or to find that it undermined the evidence. He might have added, and I note now, that there is no evidence from the Gudwarah or anybody else who came into contact with the Appellant at that time.

16. Returning to the complaint again, it is suggested that the Immigration Judge had failed to deal with paragraph 276ADE but the fact is that the Appellant, whatever his family ties may be, has retained cultural ties with India. He speaks Punjabi, it is clearly his preferred language. He was highly active, if the evidence were to be believed, in the Gudwarah and he mixes mainly with people from that cultural background. Accordingly it could not have been concluded that he has no ties culturally with the country to which he would have to go if he left the UK.

17. Having rejected his evidence with regard to the time that he has spent in the UK the Judge would be entitled to find that the Appellant was not credible with regard to the contact that he has with his family. As regards the time that he has spent in the UK, in paragraphs 20 and 21 the Judge said this:

"20. The Appellant claims to have come to the UK in 1997. There is no evidence to substantiate this claim. The earliest documentary evidence produce by the Appellant is from 2005."

I pause to add there that that is a follow up appointment for a hospital visit.

"I find that if the Appellant had come to the UK in 1997 as claimed by him that there would be some documentary evidence to support this claim prior to 2005. I find that fact that there is not to be indicative of the fact that the Appellant simply did not come to the UK in 19907 as claimed by him."

21. The Appellant, as indicated above, has produced one document relating to 2005, being a medical report. There is no further evidence until 2008. I am not satisfied based upon this document alone that the Appellant was continuously resident in the UK between 2005 and 2008 particularly noting his ability to enter the country without detection."

18. The burden was on the Appellant, that is a simple finding that he had not discharged the burden against him. The Home Office have no record of his leaving the UK. If he can enter the UK without detection it may well be that he can leave but the fact is no findings were necessary other than to find that the Appellant had not discharged the burden of proof.

19. The Judge went on with regard to the length of time that the Appellant had been in the UK to note in paragraph 25 that:

"The Appellant claims to have resided with other people and made friends since 2002 and yet none of the Appellant's friends attended court, prepared a witness statement or even wrote a letter of support of the Appellant's appeal and noting this in the light of my findings herein I find this to be further indicative of the fact that the Appellant has not resided in the UK since 1997 as claimed by him."

20. These were all findings that were open to the Judge who clearly considered the evidence overall. He did not place undue weight on any one aspect over any other. He did not need to set out each and every discrepancy. He has set out sufficient in the paragraphs I have referred to and was entitled to note that there were others. It would be a tedious exercise if the Judge were to go through by rote each and every part of the evidence and then set out each and every discrepancy. He has to give sufficient reasons and in this determination the Judge did.

21. The Appellant's article 8 position, under paragraph 400 of the Immigration Rules, had to be decided against the Rules as they now stand. With a finding that he had only been in the UK continuously from 2008 onwards the Appellant came nowhere near the new twenty year rule. He could not produce evidence that he had lost ties and indeed the manner of his giving evidence clearly showed that he retains ties culturally to India.

22. The determination in conclusion contains no errors of law. These were findings that the Judge was clearly entitled to make. They are properly made out, properly reasoned and supported by the evidence that was present and buttressed by the evidence that a Judge might have expected to have received but was not provided.

23. For all those reasons there is no error of law in this determination and the determination of First-tier Tribunal Judge Cohen of the 28th February 2014 stands.

Signed Date 28th August 2014

Deputy Upper Tribunal Judge Parkes