



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/33340/2013

THE IMMIGRATION ACTS

Heard at Field House

On 8th August 2014

Determination

Promulgated

On 8th August 2014

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR SAJJAD QAMAR

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O Oke (instructed by M-R Solicitors)

For the Respondent: Mr I Jarvis (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Respondent with regard to a determination of the First-tier Tribunal (Judge Brenells) promulgated on 9th May 2014.
2. The Appellant had sought, in accordance with the Immigration Rule extant at the time, leave to remain in the UK on the basis that he had been resident for 14 years. He did not claim to have been lawfully resident.
3. The Secretary of State did not accept that he had shown residence for the requisite period and that was the issue before the First-tier Tribunal.

4. The determination reveals that the Appellant had produced a bundle of documents in support of his appeal to show residence in the UK for 14 years. The Judge noted at paragraph 12 of the determination that the earliest document is a tenancy agreement dated 30th November 1999 which, if accepted, would establish a presence from that date. The Judge noted further on at paragraph 12 that these are not official documents but signed copies were in the Appellant's bundle. He noted that the originals were not produced and that there were no copies of the agreements in the Respondent's bundle but because they are referred to in the Letter of Refusal the Judge assumed they must have been produced.
5. The judge went on to consider those documents at paragraphs 13 and 14. In particular at paragraph 14 the Judge noted that despite the fact that the Appellant and his representatives knew that the Respondent did not accept the tenancy agreements to be genuine and having had some months to obtain confirmatory evidence they had failed to do so. They had failed to submit evidence of payment of rent such as a rent book or receipts and as a result the Judge did not accept that the tenancy agreements produced amounted to evidence of his presence in the United Kingdom from 1999.
6. At paragraph 18 the Judge referred to the Home Office Presenting Officer's submissions, in particular that there was no evidence such as letters addressed to the Appellant at the address on the tenancy agreement to show his presence there. The Judge commented at the end of paragraph 19 that he sympathised with the Appellant's representative's submission that if the Respondent was not satisfied about the tenancy, the Respondent knew the name and address of the landlord and could have checked. That, as asserted by Mr Jarvis does indicate a reversal of the burden of proof. However, reading the determination as a whole it is clear to me that the Judge did not accept that the tenancy agreements confirmed the Appellant's presence from 1999 as claimed and proceeded on that basis.
7. The Respondent challenged on that basis the Judge's conclusion at paragraph 23 that he found the documentary evidence submitted by the Appellant, coupled with the evidence of the witnesses who had submitted statements and given evidence established that he had been present continuously for 14 years. The Secretary of State argues that the documentary evidence, previously referred to, did not show that and the judge had therefore made contradictory findings.
8. The Judge did not specify in paragraph 23 what documentary evidence he was referring to. However if the Judge had already discounted the tenancy agreement, as I have found he had, it could not be that. A perusal of the Appellant's bundle does show that there is a significant amount of other documentary evidence which does show presence in United Kingdom albeit not as far back as 1999. For example, there is a letter from a consultant homoeopath confirming that the Appellant had been registered as his patient since January 2002. There are also payslips from 2000 and a

number of other documents. Those were not challenged by the Secretary of State.

9. It is not true to say therefore that in placing reliance on documents the Judge made contradictory findings. The only documents the judge did not find satisfactory was the tenancy agreements.
10. The Judge made clear at paragraphs 15, 16 and 17 that he heard from three witnesses. He set out their evidence in those paragraphs and at paragraph 22 said that he found all the witnesses to be entirely credible. Their evidence was that they had known the Appellant for a period which established his presence in the UK for 14 years. The Judge had those witnesses before him, something which I do not have the benefit of. The judge was entitled to find the witnesses credible and gave reasons for his credibility findings.
11. While it may be regarded as a generous decision and that not all Judges may have decided this appeal in the same way, there is no requirement that a Judge can only decide an appeal on the basis of documentary evidence to prove a fact. A Judge is entitled to accept oral evidence. That is what occurred here and I can discern no error of law in the Judge's reasoning which would permit me to set aside the determination. Accordingly, the appeal to the Upper Tribunal is dismissed.

Signed

Date 8th August 2014

Upper Tribunal Judge Martin