



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

Appeal Number: HU/20746/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 29 April 2019**

**Decision & Reasons Promulgated
On 09 May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**SHINGARA SINGH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms P Solanki, Counsel instructed by Atwal Law
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from a decision of First-tier Tribunal Judge Grimmett which was promulgated on 1 February 2019.
2. In short, the appellant is a citizen of India, was born on 13 May 1975. He appealed the decision taken by the Home Secretary on 26 September 2018 to refuse him leave to remain in the United Kingdom on the grounds of twenty years' residence.
3. The grounds of appeal are somewhat lengthy but in granting permission to appeal First-tier Tribunal Judge Smith was concerned that none of the

appellant's witnesses were cross-examined on behalf of the respondent nor questioned by the judge, yet the judge reached a conclusion adverse to the appellant and contrary to the unchallenged evidence of the witnesses.

4. We spent a little time this morning clarifying exactly what took place when this matter was before the First-tier Tribunal. Ms Isherwood who appears for the Secretary of State but did not appear in the First-tier Tribunal produced a short note of the representative at the time which clearly states that the appellant was cross-examined but that none of the four witnesses called on his behalf were. Those witnesses were Miss Randhawa, Mr Kanwaljit Singh Sahi, Mr Amarjit Singh Gura and Mr Charanjit Dosanjh.
5. Paragraph 10 of the decision makes clear that questions were put to the appellant, challenging the inconsistency of his testimony and his overall credibility. Ms Solanki accepted that she was not present and therefore could not comment on the implicit suggestion in the written grounds that the appellant himself had not been cross-examined.
6. Looking at the correspondence emanating from the appellant's representatives, and in particular a witness statement from Mr Peter Mark Ward of Counsel dated 26 April 2019 who represented him in the First-tier Tribunal, that reference to the appellant's witnesses not giving evidence was intended to exclude the appellant himself.
7. This appeal therefore proceeded on the basis that the appellant was indeed cross-examined but that the four other witnesses, whose names I have given, were not.
8. The evidence from those four witnesses took the form of very brief statements, in letters for, which were admitted into evidence unchallenged. The judge dealt with these witnesses in paragraph 11-13 as follows:
 - “11. The appellant's witnesses, Mr Sahi, Mr Singh, Mr Gura and Mr Dosanjh all said they first met the appellant in the United Kingdom in 2000. None explained how they recalled that to be the year. I am not satisfied statements providing no explanation as to how they recall that year outweighs the lack of documentary evidence when the appellant was able to provide considerable evidence of his time in the United Kingdom.
 12. Mr Dhariwal said he has known the appellant since 1996 but not when he first met him in the United Kingdom.
 13. There is an absence of evidence to show the appellant was in the United Kingdom between April 1998 and August 2000. I was not, therefore, satisfied that he meets the requirements of the Rules”.
9. Ms Isherwood, for the respondent, is that notwithstanding the absence of cross-examination, there was no error of law on the judge's part and that the decision should not be interfered with for a number of reasons. First,

she says the statements were all very brief and secondly, the judge was entitled to put less weight on the content of the statements than on the absence of documentary evidence. She also makes the point, which is true, that there is a striking similarity as between the words and phraseology used in those short statements, suggesting that they might have been drafted by the same hand.

10. The issue here goes beyond the question of the relative weight to be given to different parts of the evidence. What in fact the judge was doing here was rejecting out of hand the evidence of four witnesses without cross-examination from the respondent, questions from the bench, or any indication that the judge intended to disbelieve and reject it. The question of striking similarity between the statements, suggestive of collaboration and/or fabrication, does not appear to have been raised in the First-tier Tribunal, nor was it given by the judge as a reason for questioning the credibility of the witnesses.
11. I fully accept that the appellant himself was cross-examined but the absence of cross-examination of the other four witnesses is indicative of an absence of proper scrutiny and did not provide a sound foundation for this judge to reject the evidence wholesale as she duly did.
12. It may well be of course that looked at afresh the same decision might be reached but justice requires the appeal to be considered afresh and this appeal must therefore be allowed.

Notice of decision

- (1) The appeal is allowed and the decision of the First-tier Tribunal is set aside;
- (2) The matter is remitted to the First-tier Tribunal to be heard afresh by a judge other than Judge Grimmett;
- (3) No findings of fact are preserved;
- (4) No anonymity direction is made.

Signed *Mark Hill*

Date

5 May 2019

Deputy Upper Tribunal Judge Hill QC