



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/00556/2020

THE IMMIGRATION ACTS

Heard at Field House
On 29 June 2021

Decision & Reasons Promulgated
On 13 July 2021

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

AMRIK SINGH
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Khan of Counsel, instructed by Adam Bernard
Solicitors

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal comes before me following the decision of Upper Tribunal Judge Plimmer on 9 October 2020 to set aside the determination of First-tier Tribunal Judge O'Garro dated 27 March 2020. Judge O'Garro had allowed the appellant's article 8 appeal having found that he had resided in the UK since 1996 without absences. Upper Tribunal Judge Reeds allowed the Secretary of State's appeal against that decision on the basis

that the judge had failed to adequately reason how she concluded, in the absence of any documentary evidence, that the appellant had resided here between 1996 and 2002. It was accepted that there was evidence as to his presence here from 2002 until the present date and that finding has been preserved.

2. The appellant is an Indian national from the Punjab born on 21 June 1971. He claims to have entered illegally with the help of an agent in April 1996. On 16 March 2015 he was served with enforcement papers when he came to the attention of the authorities, but he did not seek to regularise his stay until 11 May 2017. His application for leave on long residence grounds was refused because the respondent did not accept he had resided here since 1996 as he claimed and because she was not satisfied that there would be very significant obstacles to his reintegration on return to India. The respondent also considered that there were no exceptional circumstances which warranted the grant of leave outside the rules.

The Hearing

3. The appellant attended the hearing before me on 29 June 2021 along with two witnesses. I heard oral evidence from them in turn in Punjabi through the court interpreter whom they all confirmed they understood. No interpretation issues arose during the course of the hearing.
4. The appellant gave evidence first. He confirmed his name and address as 369 Thorold Road in Ilford and gave his date of birth as 21 June 1971. He stated that he had never used any other names or dates of birth. He confirmed the contents of the two witness statements in the bundle as true and adopted them as his evidence in chief. He was then tendered for cross examination.
5. In response to Mr Tufan's questions, the appellant stated that his correct year of birth was 1971; the reference to 1972 in his witness statement was an error. The NHS letter in the bundle which referred to one Amrik Singh but with a different date of birth did not relate to him. Mr Khan confirmed that this had been included in the bundle by the representatives in error. He explained that it had also been included in the bundle before the First-tier Tribunal. Given the personal contents of that letter, it is extremely concerning that the appellant's solicitors would have included evidence relating to another of their clients and breach his confidentiality in such a serious way on two occasions, and despite being alerted to the error on the last occasion. Mr Khan assured me that he would convey my concerns to the representatives.
6. The appellant produced his driving licence to confirm his 1971 date of birth. He stated that he had obtained it in 2003.

7. The appellant confirmed that he had met his friend, Mr Lal, when working in construction. He said he had been taken to the site by a builder and he had been paid in cash. He had no evidence that he had worked there. He said he had been taken there from the gurdwara in 1997. Mr Lal undertook carpentry and other labouring jobs.
8. The appellant explained that his friend, Ranjit Singh, who had provided a supporting statement, had not been able to leave work and attend the hearing.
9. With regard to his friend, Shervinder Singh, the appellant stated that he used to see him at the Ford Social Club. He said he himself was not a member of the club; he just passed by. They had open grounds so anyone could walk in. He said he met Mr Lal in 1997 and Shervinder Singh in 1998. He was very close friends with both of them. Mr Tufan asked him if he had any photographic evidence of his time with his friends in the 1990s. He said he did not; at that time, he was not fond of photographs. When asked about the club's activities he stated that they had a bar, and hockey and football could be played there. He, himself, was interested in hockey. Mr Lal was not a member of the club.
10. That completed cross examination. There was no re-examination.
11. In response to questions I put for clarification, the appellant said that he had travelled by air from India to Dubai and then to Russia and from there it had taken almost a year to reach the UK by car via Calais. The agent had taken him to the gurdwara in Barking and they had then put him up in various accommodation, but he could not recall any details. He said he had come here to work because there was no future in India. He had left behind his parents, one brother, one sister, a wife and a son who was now aged 24. He thought his son had been born in 1993.
12. The appellant said he had opened a bank account in 2003. He had been unable to do so before because he had not had any ID but once he obtained a driving licence, he used that as ID. When asked how he had obtained a licence without ID, he stated that he had shown them his passport. When asked why he had not used his passport as ID for a bank account, he stated that he had no leave to remain shown on it. When it was pointed out that his licence did not show his status, he said the bank only checked the licence for his date of birth.
13. I asked the appellant whether his friends were aware of his lack of status. He confirmed they were. When asked what view they had taken about that, he replied that they had not had such a discussion. His friends were aware but had said nothing.
14. I asked the appellant why he had waited until 2017 to seek to regularise his stay. He said that he spoke to a solicitor in 2016/2017 who had told

him to wait but this solicitor was no longer working. He had waited a long time because he had not known what to do.

15. I asked the appellant about his private life. He said he had friends and there was "good culture". He had nothing else he wanted to tell me.
16. He confirmed he had kept in contact with his family although he rowed with his wife "all the time". He sent money to his family. His brother had passed away 9 months ago.
17. Neither party had any questions arising and that completed the appellant's oral evidence.
18. I then heard evidence from Shervinder Singh. He confirmed his address on Donald Drive and his date of birth. He also adopted his witness statement which he confirmed was true and correct. He was asked how he was certain that he had met the appellant in 1998. He stated he had met him at the social club. The appellant used to come there with his friend. The question was repeated and the witness stated that they got together on Fridays. He did not have his passport with him.
19. In cross-examination, the witness stated that he had been a member of the social club but it had since closed. He confirmed that he used to have a membership card but not any longer. He clarified that he had paid a fee and had a card in 1998. When asked when the club had closed, he then said it had not. The club stayed open, but the hockey stopped. The witness stated that he had obtained British nationality in 2010 or 2011.
20. The witness stated that he did not think that the appellant was a member of the club. He used to come with his friends. He could not remember them because it was a long time ago. When asked whether he had any other contact with the appellant apart from seeing him at the club, he said they saw each other weekends. He said that he had met the appellant's parents in India six years ago. That completed cross examination. There was no re-examination.
21. In response to my questions, the witness stated that he had come to the UK in 1991 as a visitor. Thereafter, he got married and stayed. He said he did not know about the appellant's illegal status. When asked what he thought he had come to court for, he then said the appellant had told him about his position just before he prepared his witness statement last year. When asked whether he only saw the appellant at the club, he replied that they went to other matches together. He did not know where the appellant had lived. He only knew he lived in Ilford. Those were my questions. Neither party had any questions arising from mine.
22. The next and last witness was Mohan Lal who confirmed his personal details. He was asked by Mr Khan about the claim in his statement that

the appellant had lived with him until 2020. He agreed that was correct. The question was repeated twice and both times he confirmed that was correct. He then confirmed the contents of his two statements were true and adopted both as his evidence in chief.

23. In cross examination the witness stated that the appellant was no longer living with him. When asked when the appellant had moved out, the witness replied it was a long time ago. He stated he had moved to his current address a year ago. Prior to that he had lived at Thorold Road but he did not know where the appellant had been living at that time.
24. The witness confirmed that he had met the appellant when working in construction. He said he himself had been working lawfully. He did not know about the appellant; he had not asked him. They had worked together for one year but it was a long time ago and he was not sure. The witness said that he had an Indian passport. He had indefinite leave to remain. He did not have a British passport. When asked whether he had ever been in prison in the UK he said he had. He confirmed that he had been convicted for driving whilst disqualified and for failing to provide a specimen.
25. Mr Khan re-examined. The witness confirmed that the appellant had lived with him at Hamilton Road. He said the appellant was no longer there, but he had no idea when he had moved out; it was a long time ago.
26. I then asked the witness how it was that he was able to remember when he met the appellant if he could not recall anything else., even more recent events such as the appellant's move and where he lived thereafter. He said that he remembered when he came to the UK from India. When asked when that was, he said 1978. A moment later he said it could be 1988. He had come as a visitor and then claimed asylum. In 1999 he obtained indefinite leave to remain. No evidence of his status has been adduced.
27. Mr Khan questioned the witness again about his ability to recall that he met the appellant in 1997. He then said he did not remember the year and he had no proof or evidence. The appellant had been worried about finding a place to live and had come to him.
28. That completed the oral evidence. I then heard submissions. These are set out in full in my record of proceedings but, to summarise, Mr Tufan submitted that there was no reliable evidence to cover the period of residence claimed between 1996 and 2002. The witnesses had been confused and contradictory. The high test under paragraph 276ADE(vi) had not been met. The appellant had spent his formative years in India, he had family there and had no health issues. With respect to article 8

outside the rules, whilst he had established a private life, his stay had always been precarious, he did not speak English and was not financially independent. The appeal should be dismissed.

29. Mr Khan asked that I allow the appeal. The appellant and his witnesses had been credible, and the appellant had been frank and open in his evidence. The witnesses may have sounded confused, but they were being asked about events dating back a number of years. They were, however, consistent about when they had met the appellant. The appellant had lived here for a number of years and had formed friendships. He was now 50. He would not be able to enjoy the same quality of friendships in India. He had a strong support network here and an absence of ties to India.
30. That completed the evidence and submissions. At the conclusion of the hearing, I reserved my decision which I now give with reasons.

Discussion and Conclusions

31. The appellant has relied on paragraph 276ADE(vi) of the Immigration Rules or, alternatively, on article 8 in terms of his private life. In his skeleton argument and in submissions,, Mr Khan argued that the appellant had been here for over 20 years but failing that, he had shown that he would face very significant obstacles on his return to India because he had no connections there. He also submitted that the appellant had established a private life in the UK which was strong enough to render removal disproportionate.
32. No case law was relied on, but I have considered the guidance in R (Razgar) v Secretary of State for the Home Department (SSHD) [2004] UKHL 27 and the five stages recommended by Lord Bingham as the correct approach to Article 8 decision making. It was considered that the questions for the court were likely to be: "*(1) will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?; (2) If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?; (3) If so, is such interference in accord with the law?; (4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health and morals, or for the protection of the rights and freedoms of others?; (5) if so, is such interference proportionate to the legitimate public end to be achieved?...The answering of question (5), where that question is reached, must always involve the striking of a fair balance between the rights of the individual and the interests of the community which is inherent in the whole of the Convention.*" (paras 17 and 20). I also bear in mind that the correct standard in article 8 cases is the civil standard of the balance of probabilities.
33. The relevant parts of paragraph 276ADE(vi) state that an applicant must either have lived : (iii)continuously in the UK for at least 20 years

(discounting any period of imprisonment); or... (vi) continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK.

34. In terms of the consideration of article 8, I must have regard to public interest considerations and s. 117B provides:

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English-

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons-

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to-

(a) a private life, or

(b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where-

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

35. Having considered all the oral and documentary evidence and the submissions made, and bearing in mind that I must consider the evidence as at the date of the hearing, I reach the following conclusions.

36. The appellant relies on his long residence in the UK, allegedly since 1996, and the friendships he has formed here during that time as the basis of his article 8 claim. In his witness statements, he emphasises the loss of all connections with India and his integration into the British way of life. I consider first whether the appellant has made out his claim of long residence and the nature of his life here before applying the facts to paragraph 276ADE (vi) and then to a consideration of article 8 outside

the rules. This approach accords with the issues as set out in Counsel's skeleton argument (at paragraphs 6-8).

37. I do not find that the appellant has shown on the balance of probabilities that he has lived in the UK for over 20 years. Nor do I find that there would be very significant obstacles to his reintegration on return.
38. I was not impressed with the oral and written evidence of the appellant or his two witnesses. Contrary to Counsel's submission that they had been credible and that the appellant had been frank and open, I find that the appellant sought to mislead and that the oral evidence contradicted much of the written evidence to the extent that none of it is reliable. This is for the following reasons which are set out in no order of priority.
39. The appellant has been able to provide a variety of documentary evidence to cover the period from 2003. No good explanation has been given for why he did not have any documentary evidence whatsoever from the earlier period of 1996-2002. He stated that he had a passport which he used to travel to Dubai and then to Russia; that has not been provided. It may have shown the dates of his journeys. He provided bank documents; but no clear reason has been given for why he could not have opened a bank account prior to 2003. His explanation that he had no form of ID is undermined by his claim that he had a passport which he used as a form of identity to obtain a driving licence. He has provided no evidence of employment during those years and has been very vague as to where he worked and where he lived both in oral and written evidence. There is no explanation for why he could not have provided utility bills, as he subsequently has, polling cards or any form of correspondence. Nor is there any clear explanation for how he was suddenly, from 2003, able to produce a variety of documentary evidence regarding his residence yet have been unable to provide a shred of independent documentary evidence prior to that if he had indeed been living here for all those years as he claims.
40. The oral evidence is wholly inadequate and unsatisfactory. The appellant stated vaguely in his witness statement of 14 October 2020 that he had "*stayed at different places with different people*" (AB:1). When asked for further information, he was unable to provide any. He claimed to have lived with Mr Lal at Hamilton Road until 2002 but Mr Lal's witness statement claimed that he had lived there with him until 2020 (AB:4). Despite three attempts by Mr Khan, presumably to get the witness to change his account, he stood by it but made a further mess of his evidence when he later claimed to have been living elsewhere and to not know where the appellant had been living in 2020 or indeed prior to that. The appellant was very specific in his witness statement that he had met both witnesses in 1997 (AB:5 and 6) but in oral evidence he claimed to have met one in 1997 and the other in 1998. Shervinder Singh gave

1998 as the year of meeting in his statement (AB:9). The evidence is also inconsistent as to whether Shervinder Singh would socialise at the club having come there with a friend (as stated in his own evidence and the witness' oral evidence) or whether the witness brought him to the club (AB:9). Although the appellant and witnesses were vague on many other aspects of the evidence claiming that it was all a long time ago, they did not resile from their claim of when they met (other than the appellant's discrepant evidence as set out above). It is entirely unclear to me, and they could not explain, how they were all so certain about the year they met when they could not recall any other events, including more recent occurrences, with any clarity at all. They could give no reason for why they were so certain about that date when their memories were so poor on other matters.

41. Mr Lal stated in oral evidence that he and the appellant had worked together for one year, but his witness statement suggests that that they had worked together on and off for a lengthy period (AB:4). He describes the appellant as a man of good character and trustworthy despite the fact that the appellant entered the UK illegally, remained without authority until making an application to regularise his stay in 2017 and worked without permission, presumably paying no taxes or national insurance contributions. Moreover, Mr Lal has a criminal conviction or driving whilst disqualified. His regard for the law is therefore somewhat dubious.
42. The oral evidence of the appellant and his witnesses also changed as it went along. Mr Lal was adamant that the claim in his statement about the appellant living with him until 2020 was true and correct but he later retracted that claim and appeared not to recall when or for how long they lived together. Shervinder Singh maintained he did not know about the appellant's illegal status but then when the oddity of him attending the hearing was put to him he retracted his evidence and maintained he had known but only found out a year ago. He also gave conflicting evidence as to whether he only used to meet the appellant at the club or whether they went together to other venues. The evidence was that the appellant and the witnesses were very close and had strong relationships but neither knew where the appellant lived. Mr Lal's oral evidence on how long he and the appellant had worked together contradicted his written evidence. The appellant maintained at his last hearing and in his witness statements that he had lost all connections and ties to India but it emerged in his answers to my questions that he had in fact been in touch all along with his family, that he was in contact with his wife, son, parents and siblings and was even sending money to them and that his friend, Shervinder Singh, had gone to visit his parents on his visit to India a few years ago. That does not accord with a claim that he has no ties to India and would have no support network there or a home to return to. Plainly he has close family with whom he has

stayed in touch and no reasons were given as why he would not be able to return home and resume his life with his them. He may find it difficult after all his time away but that does not, in my view, amount to a very significant obstacle. He has retained his Punjabi, indeed had to make use of an interpreter for the hearing, he is involved with the Sikh gurdwara and his best friends are all from the Sikh/Indian community. he plainly retains language, cultural, religious and familial ties to his country of origin. Mr Khan argued that the appellant would not have the same quality of friendships in India but gave no reason for that submission. Friendships are all different, but I cannot see anything in the evidence I have seen and heard as to why these friendships are said to be particularly strong. They appear to consist of meeting at a club on weekends.

43. I place little weight on the statements from other friends as they did not attend the hearing and their evidence could not be tested. Some of the letters of support are written in identical format and that further detracts from their reliability.
44. The appellant's own written evidence also undermines his claim to have been in the UK since 1996 because he states that he had left his country almost 18 years ago. Although the copy of that statement in the latest bundle is unsigned and undated, a signed copy is contained in the bundle for the hearing in March 2020 and is dated 26 February 2020. If at that time the appellant professed to have been in the UK almost 18 years, he could not possibly have entered in 1996 as he now claims. I note that the appellant confirmed the contents of that statement and that it was adopted as true and correct with no amendments. No explanation for this has been provided.
45. For these reasons I find that the appellant has not met the requirements of either sub section (iii) or (vi) of paragraph 276ADE.
46. I now turn to the appellant's private life claim. Accepting that the appellant has a private life in the UK by way of his residence here since 2003, and answering in the positive to questions 2, 3 and 4 of the Razgar stages, I come to the proportionality assessment. I am required to consider the public interest factors set out in s.117.
47. The appellant speaks a little English but as he had to use an interpreter to give his oral evidence, I must find that his knowledge of English is not fluent. I have seen no independent evidence of any work the appellant has undertaken during his time in the UK, no evidence of any tax paid or national insurance contributions paid. The letter from December 2009 (AB:N5) is unsupported by any evidence of income. In his application form he claimed that he was supported by friends but no reliable evidence of that has been produced and the witnesses did not give

evidence in that respect. Additionally, no reason is given as to why anyone would take on the responsibility for supporting someone over a number of years. I do not find that the appellant has shown himself to be financially independent. He has never had leave to enter or remain and has always known that eh was here unlawfully. Little weight can be given to his private life when his status has always been unlawful and precarious. Despite knowing he has no permission to be here, he remained and took no steps to regularise his stay until 2017. He has shown no regard for the laws of this country.

48. His friendships such as they are show no interdependency and there is no reason why they should take precedence over the public interest of removing an illegal immigrant who has not integrated into British society and who has not contributed to it, particularly when he has a home and close family to return to in India. I conclude that in his circumstances, removal is a proportionate interference in his private life. No exceptional circumstances have been identified that would warrant a grant of discretionary leave.

Decision

49. The appeal is dismissed on human rights grounds.

Signed

Dr R Kekić

Upper Tribunal Judge
5 July 2021