Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/04690/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 19 September 2013	**On 4 October 2013**
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Before

UPPER TRIBUNAL JUDGE PERKINS

Between

BILAL KHAN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Dhanji, Counsel, instructed by Maliks and Khan Solicitors
For the Respondent: Ms Z Kiss, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by a citizen of Pakistan against a decision of the First-tier Tribunal Judge dismissing his appeal against a decision of the respondent on 29 January 2013 to remove him from the United Kingdom. It is the appellant's case that he is entitled to remain in the United Kingdom by reason of fourteen years' unlawful residence. He failed to satisfy the Secretary of State, and in due course the First-tier Tribunal, that he had resided in the United Kingdom for the time said. In order to prove his claim under the rules he would have had to have satisfied the judge that he had resided in the United Kingdom since 1998.

2. It is infuriating that this appeal comes before me because the determination is only a few short paragraphs away from being unimpeachable but, as it is, there are difficulties in it which led to permission to appeal being granted by Upper Tribunal Judge Chalkley and my having to give think carefully about Mr Dhanji's thoughtful and carefully crafted submissions.

3. When I stand back and look what happened, it is clear how the First-tier Tribunal Judge reached the conclusion that he did. He had before him, as Mr Dhanji recognises, essentially three strands of evidence going to the crucial date. The first was a document from an employer which I call the "Chicken and Spice" letter, the second was the oral testimony of the appellant and the third was the oral testimony of Mr Khan, who was a friend of the appellant's who claimed to have accommodated him when he arrived in the United Kingdom in 1998.

4. There was other evidence before the Tribunal. It consisted of supporting references from people such as local councillors, people who knew the appellant socially, a supporting reference from a mosque that the appellant attends and a small number of documents relating to his life in the United Kingdom. This evidence was rather lumped together by the First-tier Tribunal Judge but with some justification because none of it actually placed the appellant in the United Kingdom at the material time. It all referred to knowing the appellant at a time which, even if the claim was accepted, did not establish fourteen years' residence. Mr Dhanji says that some of these letters or documents additionally made favourable comments about the appellant's integrity and good faith which ought to have been considered expressly.

5. A real difficulty I have in the determination is that the First-tier Tribunal Judge does not at any point say in terms that he disbelieved the appellant or disbelieved Mr Khan. Neither does it give express reasons for rejecting their evidence. This gave Mr Dhanji the opportunity, which he took properly, of saying that the determination was entirely unsatisfactory and the case had to be re-decided.

6. I anticipated this line of argument when I read the case and I thought about more when the case was argued. I am not persuaded that the argument is well-founded. I say that because the determination clearly shows that the judge considered the evidence. Significant parts of the oral evidence and cross-examination are recorded It is quite clear that the evidence was in the judge's mind when he went on to say that he was not satisfied that the appellant had been in the United Kingdom for the time that he says.

7. What the judge did was to balance the oral evidence that he heard with other features of the case. He noted, for example, the almost complete lack of documentary evidence.

8. The judge made a stray remark about the appellant not having a gym card and much was made of this, but I find that this is a distortion of what had really happened. At paragraph 12 of the determination the judge was expressly looking for something outside the oral evidence that would have helped the case and reminding himself, as is settled law, that he can bear in mind that certain kinds of documents could be expected and their omission can be a proper matter for comment. He did not decide the case because there was not a gym card. Rather he decided the case because there was nothing, or almost nothing, from the appellant's allegedly long stay in the United Kingdom that confirmed the oral evidence. This was a

point he was entitled to take into account and it is impossible for me to say on the material before me that he gave this strand of evidence disproportionate or unlawful weight.

9. Similarly, he did look at the other documents about the appellant's stay in the United Kingdom and noted for example that the supporting letter from the mosque, which might be expected to be authoritative and honest, did not put him in the United Kingdom for nearly long enough to establish the case. It merely referred, with possibly deliberate ambiguity, to knowing the appellant for several years. In other words the judge was clearly looking at the evidence apart from the oral evidence to find things that would help the appellant. He found that there were none.

10. Ms Kiss has also made the point that the failure to comment on the approving remarks on the appellant's character is not of any great significance when it is remembered that it is a matter of record, being an essential element of the appellant's case, that he was in the United Kingdom without permission. Those who spoke favourably of his character either thought it unimportant that he was in the United Kingdom unlawfully or were unaware of his immigration history and either explanation would mean that their evidence about his character was of no great value to anyone. Whether this was something the Tribunal actually considered is something we do not know, but I agree with Ms Kiss that the omission does not have any material significance.

11. It is vexing from the appellant's point of view that no express consideration at all was given to the Chicken and Spice letter. The letter was potentially very helpful because it purported to be from the person who allegedly employed the appellant when he arrived in 1998. It was mentioned expressly in the skeleton argument and so it is unfortunate that it was not considered expressly in the determination. However, the letter itself is of unimpressive quality. It is not on official printed notepaper. It is computer generated and is initialled rather than signed. There is some sort of stamp on it which gives it an additional air of authenticity but, most significantly, it actually conflicts with the appellant's own evidence. It refers to him being a full-time worker when it was the appellant's case that he was a part-time worker.

12. I have not been able to find any explanation in the papers why in this case that is notably lacking in documents this one document allegedly from 2001 seems to have been preserved and kept.

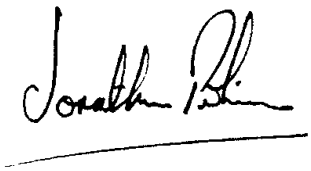
13. It is regrettable that it was not considered expressly but, having looked at it with care, it is not something which has compelling qualities that means its admission is necessarily material.

14. I then look at the oral evidence. It would have been very much more helpful if the First-tier Tribunal Judge had come out and said in terms that he did not believe the evidence that he was given and gave reasons for his finding. The fact is that he did not believe it and he did give reasons. He did not believe it because he dismissed the appeal. The reasons are that the evidence comes from either the appellant who had a vested interest in being untruthful, from a friend of the appellant's who had an incentive to

reorganise his memory to assist a friend, and it was not supported in any other way.

15. What the judge has clearly done is to have evaluated the oral testimony against the other features in the case and the submission which have been commented upon, before reaching the conclusion that the evidence that he heard was not persuasive.

16. There are criticism that can be made of the First-tier Tribunal's determination but I am satisfied that the determination is good enough. When it is read fairly it is clear that the First-tier Tribunal Judge applied his mind to the things that mattered but was unpersuaded by the oral evidence heard. He reached a conclusion that was open to him on the material before him. I am satisfied that the determination is sound in law, and therefore I dismiss the appeal before me.

Signed
Jonathan Perkins
Judge of the Upper Tribunal  Dated 3 October 2013