Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/06683/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 19 September 2013	**On 30 September 2013**

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

MUHAMMED ISRAR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Blundell, Counsel instructed by Messrs Makka Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Pakistan born on 2 October 1979 appeals, with permission, against a determination of Judge of the First-tier Tribunal Widdup who in a determination promulgated on 3 July 2013 dismissed the appellant's appeal against a decision by the respondent to refuse to grant indefinite leave to remain. The

appellant's application had been made in March 2012 on the basis that he had lived in Britain for more than fourteen years. The refusal is dated 15 February 2013.

2. At the hearing the judge received evidence from the appellant and from a number of witnesses. It was the appellant's claim that he had entered Britain illegally on 25 June 1997 going shortly thereafter to live in south London with a Mr Starr working at a restaurant, Kababish King, until the end of 1999. His wage slips had been in the name of Israr Ahmed because his employer had made a mistake with his name and refused to put it right.

3. In 2000 he had been employed by a removal company owned by Mr Shahid Chaudhary.

4. The appellant asserted that he had written the date of his arrival in his diary and that he had borrowed money to pay for his journey to Europe.

5. A Mr Mohammad Anwar, who lived in Manchester gave evidence stating that in 1999 he had visited family in Tooting and had gone to the Kababish King for a meal and saw the appellant there. He had maintained contact with the appellant thereafter and he was sure that the meeting had been in 1999 because his son had just been born. Mr Ahmed's wife also gave evidence regarding the meeting.

6. A Paul Davies who lived in Manchester stated that he had first met the appellant in 2001 when the appellant was working as a chef in London. He had later met the appellant when he was working for KFC in Manchester.

7. A Mr Abduo Krubally also gave evidence stating that he met the appellant in 2000.

8. A Javed Iqbal gave evidence stating that he had first the appellant in either 1999 or 2000.

9. In paragraphs 27 onwards of the determination the judge set out his conclusions. He found that the only evidence about the appellant's entry into Britain was the oral evidence of the appellant that he had entered on 25 June 1997. He noted the appellant's claim that he had moved to Tooting after one month with Abdul Starr but that Abdul Starr was unable to give evidence because he was in Pakistan. He considered that the evidence of Mr Starr and indeed that of Mr Chaudhary who had employed the appellant at the removal company would have been of use. He stated that there were other possible witnesses from that period who could have given important evidence including those friends the appellant had stated had given him money to come to Britain. He pointed out that there were no witness statements or letters in support from any of those friends.

10. He concluded that the documents produced by the appellant in support of his case that he was living and working in Britain in 1998 to 2000 were of little or no weight,

pointing out that the payslips produced which , the appellant claimed, showed that he had worked in Tooting for Kababish King were not in the appellant's name.

11. He noted that the respondent had challenged the payslips by referring to incorrect tax codes but that there would be no evidence to show that the code was incorrect and that no P60s and no employer's name had been provided. He said that as there was a different name on the payslips he could give them no weight.

12. He then referred to the oral evidence including that of Mr Anwar and his wife who stated that they had good reason to remember 1999 but he said that it did not follow that any friendship with the appellant began that year although their recollection of first meeting him was indeed in 1999.

13. He noted that Mr Davies had stated that he had first met the appellant in 2001.

14. In paragraphs 38 onwards he set out his conclusions:

> "38. I will now consider all this evidence in the round and I reach the following conclusions:
>
> (i) There is no evidence of weight to show that the Appellant did indeed arrive in the UK in June 1997. The sole evidence is that of the Appellant.
>
> (ii) The Appellant has not called witnesses who knew him in 1998 or in the early years of his claimed stay in the UK even though he is still in contact with him. Even if Mr Starr and Mr Chaudhary are in Pakistan he has not obtained any written evidence from them.
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> (iii) The payslips from Kababish King are not ones on which I can place weight for the reasons I have given.
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> (iv) None of the Appellant's witnesses was from London; the London witnesses who provided witness statements did not attend the hearing and I attach no weight to their witness statements.
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> (v) The common theme of all the Manchester witnesses was of meeting the Appellant in either London or Manchester and being impressed with his manner or service and of then striking up a friendship which involved meetings from time to time in either London or Manchester and a friendship which endures to this day. Two of the witnesses described chance meetings with him.
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> 39. I must consider the quality of the evidence in support of the Appellant's case that he has lived in the UK for 14 years. Although witnesses tried to identify dates of meetings by reference to events in their own lives, those accounts would have carried more weight if the meeting had related more directly to the event described. Thus while I accept, for example, that Mr and Mrs Anwar's son was born in 1999 it does not follow that they would remember that year as being the year in which they met the Appellant.

> 40. Having seen and heard all the witnesses I am not satisfied that they were giving me evidence which was reliable as to the dates when they met the Appellant and I am therefore unable to find that the evidence, taken as a whole, is of such quality and reliability to enable me to find that the Appellant has discharged the burden of proof on him."

15. In paragraph 41 onwards he considered the issue of the rights of the appellant under Article 8 of the ECHR. He found that the removal of the appellant would be proportionate.

16. The appellant appealed. The grounds of appeal argued first that the determination was not properly reasoned and that it was not clear how the judge reached his conclusion that the appellant should not succeed under paragraph 276B of the Rules. They asserted that the fact that the judge had said that two of the witnesses had good reasons for remembering 1999 but that from that it did not follow that their friendship with the appellant began that year or their recollection of first meeting him in 1999 was correct, was a statement of fact, not a finding. The grounds claimed that on the balance of probability if the witnesses had not contradicted themselves, internally or in their evidence with other witness, including the appellant, the fact that they were able to place their first meeting with the appellant at a particular time ought to be something that "goes in favour of the appellant, not against him." They stated the judge had given no reasons for attaching little or no weight to their evidence.

17. The grounds also criticise the judge for making no finding on whether or not he accepted the evidence of Mr Davies that he had first met the appellant in 2001 stating that the judge should be required to make a finding whether or not he accepted that evidence.

18. The second ground of appeal stated that the judge attached undue weight to the evidence which was not before him – criticising the appellant not using witnesses from London and his inability to provide the diary. It was claimed that the judge had not placed adequate weight on the evidence before him.

19. With regard to the appellant's rights under Article 8 it was claimed that the judge had not made any attempt to quantify the nature or quality of the private life with reference to the length of time the appellant had been here.

20. In response to the grounds of appeal the Secretary of State served a notice under Rule 34 stating that the judge had given ample reasons for the conclusions which he had drawn. It was stated that the grounds revealed no more than an argument with the judge's findings.

21. At the hearing of the appeal before me Mr Blundell stated that he relied on the final sentence of paragraph 4 of the grounds which stated:-

> "The fact is, that the FTTJ simply gives no, or inadequate reasons for reaching the conclusion that the witnesses who attended the appeal and gave evidence could not be

relied upon and, consequently, that the appellant had not been in the UK for a period of 14 years."

22. He went on to refer to the oral evidence given by the appellant and five supporting witnesses and particularly the evidence of Mr Mohammad Anwar and his wife who had stated that they had met the appellant in 1999 – the year in which their first child had been born. He argued that the judge had not made any clear finding on the evidence of Mr Anwar and his wife that they had met the appellant in 1999: that evidence had neither been accepted nor rejected. What the judge had stated in paragraph 35 that although he accepted that Mr Anwar and his wife had good reasons for remembering 1999 it did not follow that any friendship with the appellant began that year or that their recollection of first meeting him was in 1999 was a comment rather than a finding of fact. Moreover in paragraph 39 the judge, by stating "thus while I accept, for example, that Mr and Mrs Anwar's son was born in 1999 it does not follow that they would remember that year as being the year in which they met the Appellant" was also a comment rather than a conclusion. The judge had not made a clear finding in his determination.

23. He referred to the evidence given by Mr Davies and Mr Javed Iqbal and stated that the judge had not stated whether or not he accepted or rejected that evidence: the judge had not made any finding regarding the absence of evidence. He argued that the determination was vitiated because of a lack of clear reasoning.

24. In reply Mr Tufan stated that the judge had clearly considered the evidence in the round and in detail and reached conclusions on the totality of the evidence. He referred to the determination of the Upper Tribunal in **Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085 (IAC)** which stated in the head note:-

> "(1) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge."

25. He stated that the judge had weighed up all relevant evidence and reached a conclusion which was fully open to him and that therefore there was no error of law in the determination.

26. In reply Mr Blundell, although he accepted the ratio of the determination in **Shizad** emphasised that clear findings were required on the evidence rather than findings by implication.

27. I find there is no material error of law in the determination of the First-tier Judge. The reality is that he did set out in some detail the evidence which he heard and at considerable length set out his conclusions. These were summarised in paragraph 38. He was entitled to place weight on the fact that there was no evidence that the appellant had arrived in Britain in 1997, that the appellant had not called witnesses who had known him in 1998 or in the early years of his claimed stay and there was

no evidence from Mr Starr and Mr Chaudhary. He rejected the payslips from Kababish King and clearly it was right to do so as these were not even in the appellant's name.

28. Having commented on the evidence given by "the Manchester witnesses" he considered the quality of all the evidence in the following paragraph. It is clear that in that paragraph he further evaluates the evidence given by Mohammad Anwar and his wife and found that it was not clear evidence that the appellant had been in Britain in 1999. His conclusion in paragraph 40 that he was not satisfied that the witnesses were giving evidence which was reliable as to the dates when they met the appellant and was therefore unable to find that the evidence taken as a whole was of such quality and reliability to enable him to find that the appellant had discharged the burden of proof upon him was a clear and unequivocal conclusion which reflected the care with which he had considered all the evidence before him. In particular his conclusion was clear that the witnesses were not satisfied as to the dates when they had met the appellant. That in effect relates in particular to the evidence of Mr Anwar and his wife as they were the only witnesses whose evidence was such as to support the appellant's contention that he had lived in Britain for fourteen years.

29. The reality is that the judge did weigh up all the evidence before him and reached conclusions which were fully open to him. The burden of proof is, of course, on the appellant; it is clear that the judge found that that burden had not been discharged.

30. Although it was not argued before me I note that in the grounds of appeal it was argued that the judge had erred in his consideration of the rights of the appellant under Article 8 of the ECHR. Mr Blundell was correct not to pursue that ground as it is clear from the determination that the judge did properly consider the appellant's rights to private life in the appropriate structured way and that his conclusion that removal of the appellant would not be disproportionate was entirely open to him.

31. I therefore find that there was no material error of law in the determination of the Immigration Judge and that his decision dismissing this appeal on both immigration and human rights grounds shall stand.

Signed Date

Upper Tribunal Judge McGeachy