



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

Appeal Number: IA/05695/2013

THE IMMIGRATION ACTS

Heard at Field House

On 8 August 2014

Determination

Promulgated

On 20 August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

MR HARGOBIND SINGH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Khan, Counsel instructed by Charles Simmons Solicitors

For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of India and his date of birth is 20 October 1976. He made an application for indefinite leave to remain on 6 July 2012. His case is that he had been in the UK continuously for a period of at least fourteen years, having entered illegally on 15 June 1998.

2. The appellant's application was refused by the Secretary of State in a decision of 11 February 2013. The decision-maker concluded that there was insufficient evidence that the appellant had been here for the period of time claimed and noted that the documents that the appellant had been submitted in support of his application were dated from 2010 save a photocopy of a letter dated 2006, but this was not accepted because it was not an original. There were before the decision-maker letters of support written by friends and associates of the appellant who claimed to have known him since 1998 and 2006. However, the decision-maker concluded that there was insufficient evidence that the appellant had resided continuously in the UK since 1998.
3. The appellant appealed against the decision and his appeal was dismissed by Judge of the First-tier Tribunal Cohen in a decision of 1 April 2014, following a hearing on 28 February 2014. Permission to appeal was granted to the appellant by Judge Osborne in a decision of 13 June 2014. Thus the matter came before me.

The Decision of the First-tier Tribunal

4. The First-tier Tribunal heard evidence from the appellant, Sukhbir Kaur (the appellant's partner and a citizen of India) and a witness Jasbinder Singh Johal. The evidence was that the appellant lives in the UK with his partner Sukhbir Kaur and their daughter (date of birth 30 September 2009) who like her parents is also a citizen of India. The evidence was that the appellant last had contact with his family in India 2000. He left India as a result of a land dispute. There were witness statements before the First-tier Tribunal from other friends and acquaintances.
5. The First-tier Tribunal made findings at paragraphs 19 to 31 of the determination:
 - "19. The burden of proving that the decision of the respondent was not in accordance with the law and the relevant Immigration Rules rests upon the appellant. The standard of that proof is the balance of probabilities. The relevant date for the purposes of this appeal is the date of the hearing. I must therefore look at those facts in existence on that date.
 20. The appellant has sought to apply for indefinite leave to remain based on long residence claiming to have lived in the UK in 1998. The earliest document provided by him relates to 2006 and there is then a gap until 2010. The documentation provided by the appellant in support of his claim to have resided in the UK for 15 years is substantially lacking. There is no suitable explanation for this lack of documentation and I would expect substantially more documentation to support a claim to have lived in the UK for in excess of 14 years notwithstanding the fact that the

appellant was not here legally. I find the lack of documentary evidence to be indicative of the fact that the appellant simply has not lived in the UK for the claimed period.

21. As indicated above, I tested the appellant's English which was extremely poor and showed no comprehension. I find that if the appellant had lived in the UK for 15 years as claimed that his English and level of comprehension would have been significantly greater than that demonstrated. I find the lack of the appellants English language abilities indicative of the fact that he is simply not resided in the UK for 14 years plus as claimed.
22. The appellant has produced a letter from the Gudwara in support of his appeal indicating that he had attended for a long period of time and was a problem but member whereas the appellant indicated that he was a simple member who attended on occasions was not prominent. I find this to be a discrepancy in the evidence before me and damaging to the credibility of this appeal and indicative of the fact that the appellant has not resided in the UK for the claimed period. In the light of discrepancy I attach very little weight to this document.
23. The appellant has produced witnesses stating clear reasons why they remember meeting the appellant in 1998 related to the purchase of a car at that time by find that evidence to be self-serving and attach limited weight to it. In these circumstances I do not satisfied that the appellant has resided in the UK continuously for 14 years as claimed by him and I find that the appellant's appeal under the Immigration Rules is bound to fail.
24. In the light of my findings above, I find that the respondent's decision herein is in accordance with the law and Immigration Rules applicable. I therefore dismiss the appeal under the Immigration Rules.
25. I have also considered whether the appellant's removal from the United Kingdom would breach his human rights.
26. In respect of Appendix FM the appellant has not resided in the UK for 20 years. He has sought to claim that he has severed contacts with India and that he has no one in that country who can assist him or support him and that he would be destitute. The appellant's wife was unable to state why the appellant had lost contact with his family. In these circumstances reject the appellant's claim to of lost contact with his family. The appellant speaks Punjabi and lived in India for the majority of his life including his formative years. His wife is Indian and does not have current leave to remain in the UK as she has an application outstanding. There is no expectation that she will gain the right

to reside permanently in the UK. The appellant shows speaks Punjabi as well as English. The appellant's child is very young and will easily adapt to life in India. The appellant's child has two sets of grandparents in India and I find that it will be in the appellant shows best interest to return to India where they will be able to have the love and support of grandparents and will accept them and for the child to remain with their parents. I find that the appellant has not severed all links with India. I reject the appellant claims to have had a land dispute and note that previous application by the appellant was refused and that he did not appeal. The appellant did not claim political asylum. India is a large country and the couple could internally relocate if required by do not find this to be the case in any event. I find that if the appellant returned to India that he would obtain valuable emotional and practical support from his parents, siblings and in-laws who could offer him accommodation until he found his feet. I reject the appellant's claims of having severed links with India in the circumstances and find that his appeal with reference to Appendix FM is bound to fail.

27. In considering the appellant's case under Article 8, I note the questions that I must address as set out in **Razgar**. I accept that the appellant is in the UK where he has resided continuously since 2006 at the earliest. He has produced no evidence of lawful entry to the UK and had no expectation of being able to settle. The appellant will return to India in greatly improved position having gained UK-work experience. The appellant is living in the UK with his partner and child and I accept that he has a family life in the UK. The appellant's removal will cause interference to that right to a family life. The appellant has lived, worked and socialised in the UK and I accept that he has established a private life in this country. I accept that the removal of the appellant to India would interfere with his private life. However I have to consider whether the interference with the appellant's family and private life would be a disproportionate response to the requirements to maintain an effective immigration control policy.
28. The appellant has established his family and private life in the UK in the full knowledge that he had no continuing right to remain here having entered the UK unlawfully and remain here since. He has not resided here for 20 years. I have found the appellant to be other than a witness of truth. I find that he has family members remaining in India with whom he is in contact with whom he may reunite upon return.
29. The appellant is a 37 year old man in good health. He has worked in the UK. I find on return to India that he may take up employment utilising the skills and experience which he has

gained in the UK. The appellant is relatively young and will readily re-adapt to life in India where he spent the majority of his life including the majority of his formative years. I find therefore that the interference to the appellant's private life in the UK would be a proportionate response to the requirement to maintain effective immigration control. He may maintain contact with friends through modern means of communication.

30. There is nothing preventing the appellant's wife, who is currently without leaving the UK returning with the appellant delivered him as part of a family unit in India together with their child. In these circumstances I find that there would be no interference caused to their right to a family life. If the appellant's wife chooses not to return with him to India that is her choice. It will mean that the interference caused with their private life is all the more justified.
31. I have addressed the appellant's child above but find it will be in the chose best interest to return to India with their parents and where they will have the love and support of an extended family including grandparents and aunts and uncles."

The Grounds Seeking Leave to Appeal and Oral Submissions

6. The grounds seeking leave to appeal argue that the Judge made a factual error. He recorded that the appellant's wife was in the UK on a student visa. At the date of the hearing she had been granted leave to remain here as a Tier 2 Migrant and there was an expectation that she would be able to apply for settlement in 2016.
7. It is argued that the Judge erred when making adverse credibility findings in relation to the appellant's English language ability. It is argued that paragraph 22 of the determination does not make sense. It is argued that the Judge failed to explain why he found the evidence of the witnesses to be self-serving and of no value. It is argued that the Judge failed to consider the child's best interests and failed to consider the appeal in the context of **Chikwamba v SSHD [2008] UKHL 40** and **Beoku-Betts v SSHD [2008] UKHL 39**. Lastly it is argued that the Judge failed to grasp the facts of the case.
8. In oral submissions Mr Khan submitted that at the time of the hearing the appellant's partner was a Tier 2 Migrant working as a dental nurse. She had been in the UK since 2007 and had been granted leave as a Tier 2 Migrant from 13 August 2013 to 16 August 2012. The Judge erred because of the factual basis of the proportionality assessment was flawed because he misunderstood the appellant's partner's status here. He submitted that the Judge erred in testing the appellant's English language ability and he did not give reasons why he attached little weight to the

evidence of the witnesses. Mr Khan conceded that the Judge had taken into account the best interests of the child and withdrew the grounds of appeal relating to this.

9. There was no response from the respondent pursuant to Rule 24 of the 2008 Procedure Rules. Mr Wilding indicated at the start of the hearing that it was opposed. Mr Wilding accepted that the Judge's finding in relation to English language was "unfortunate and unattractive" but it did not amount to a material error of law.
10. In the original grounds of appeal it is asserted that Ms Kaur is a Tier 4 Migrant and this is consistent with her statement of evidence. It does appear to me that the Judge recorded the status incorrectly because at the date of the hearing it is clear to me that she had been granted leave as a Tier 2 Migrant. It is far from clear that the Judge was made aware of this. I do not accept that the status of the appellant's partner in this case was material to the Judge's decision. Ms Kaur is a citizen of India and is in the UK on a temporary basis. Whether or not she may be able to make an application for settlement in 2016 is not material to the appeal. The mistake did not play a material part in the Tribunal's reasoning.
11. Paragraph 22 of the determination contains a typographical error but it is obvious that the word "problem" should be "prominent" thus making perfect sense. I refer to the letter from the Gudwara which the Judge referred to at paragraph 22.
12. Contrary to the grounds seeking permission to appeal the Judge did not find that the evidence of the witnesses was of no value but he attached limited weight to it and in my view this was a matter for him. The Judge was entitled to conclude that the witnesses were self-serving in the context of the evidence as a whole. There were witness statements but they were lacking in detail. One witness gave oral evidence (other than the appellant and his partner). There was in this case a lack of documentary evidence, which was noted by the Judge.
13. The Judge properly considered the child's best interests and this point was conceded by Mr Khan. The appeal was dismissed on substantive Article 8 grounds (not procedural) and therefore in my view there is no merit in the challenge relating to **Chikwamba**.
14. The Judge attached weight to his observation that the appellant's English was poor and stated that he had tested his English. In my view this amounts to a procedural irregularity. It was not the role of the Judge to test the appellant's English. However, this did not result in procedural unfairness. The outcome of this appeal would have been the same regardless of this irregularity. I am confident about this because the Judge's overriding concern was that the appellant had produced very little evidence to establish that he had been in the UK for fourteen years and there were credibility issues which did not relate to the appellant's

language ability. The Judge had the benefit of hearing oral evidence from the appellant, his partner and Mr Singh Johal and he did not accept it.

15. There are typographical errors within the determination and the reasons given by the Judge are brief, but this does not amount to a material error. It is likely to have resulted from a lack of proofreading by the Judge. However, I am satisfied that the Judge had understood the case and properly engaged with the issues. He adequately explained his reasons for his decision and it is clear to both parties why the appellant's appeal was not successful.
16. There was no material error of law and the decision to dismiss the appeal under the Rules and Article 8 stands.

Signed Joanna McWilliam

Date 19 August 2014

Deputy Upper Tribunal Judge McWilliam