



IAC-FH-NL-V2

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

Appeal Number: IA/09021/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 3 August 2015**

**Decision & Reasons Promulgated
On 18 August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MR GURMIT SINGH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Balroop, Counsel instructed by Malik Law Chambers
Solicitors (Southall)

For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of India, date of birth 15 April 1972, appealed against the Respondent's decision dated 4 February 2014 to refuse an application, dated 29 December 2012, for indefinite leave to remain in the United Kingdom on the basis of long residence with reference to paragraph 276B of the Immigration Rules HC 395, as amended. The appeal against the adverse decision of the Secretary of State came before First-tier Tribunal Judge Wyman ("the judge") who on 8 October 2014 dismissed the appeal based on the Immigration Rules and under Article 8 ECHR.

Permission to appeal that decision was given on 11 March 2015 and on or about 10 June I promulgated a decision whereby I found there was an error of law which meant that the Original Tribunal decision could not stand and the decision being appealed would have to be re-made in the Upper Tribunal.

2. On 3 August 2015 the matter returned for consideration and I heard evidence which was wholly directed at the issue of length of residence with reference to the requirements of 276B(i).
3. The other issues with reference to either rights arising under paragraph 276ADE or in relation to Article 8 ECHR were not pursued.
4. The evidence, coherently provided by a number of witnesses who Mr Walker had the opportunity to cross-examine, was that for reasons given they remembered when they had first met the Appellant in the United Kingdom in 1995. The primary connection was through a man who ultimately accommodated the Appellant and presently accommodates the Appellant, Mr Parvinder Singh Sahota, a resident of the United Kingdom and a British national. Other evidence from Mr Gurmail Singh Badyal, a UK national, Mr Kulvinder Singh, a UK national, Mr Hurbinder Singh, a British national, Mr Hindpal Singh Sindhar, a British national, Mr Gurjinder Singh, a British national and Mrs Surinder Kaur, a national of India, who identified the period of time through which they had known the Appellant in the United Kingdom.
5. I was satisfied that on a balance of probabilities the Appellant has discharged the burden of proof that at the date of the Respondent's decision he had between 1995 and 2009/ 2010 a total period without interruption of living in the United Kingdom of fourteen years' continuous residence.
6. I also found that it is apparent the Appellant had served a prison sentence of six months for the possession or control of identity documents namely a false passport which he had used to be enabled to work. The effect of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, paragraph 139, had altered the periods for rehabilitation for adult offenders a custodial sentence of six months or less at the end of a period of 24 months beginning with the date on which the sentence is completed. Once that two year period has passed and in this case that would have been in January 2012, the period had therefore expired before the date of the Respondent's decision and was not relevant to the calculation of time.
7. In the light of the submissions I am satisfied that the Appellant has still to undertake a 'knowledge of life in the United Kingdom' test.
8. However it seemed to me that the Secretary of State had not in the Reasons for Refusal Letter or in the decision considered or exercised any discretion in relation to the requirements of paragraph 276B(ii)(a)-(f). I find the matter of discretion should be exercised by the Secretary of

State. In reaching that decision I conclude in the light of *Ihmedru* [2011] UKUT 340 and *Ukas* [2012] UKUT 307 that the appropriate course is for the matter to be returned to the Secretary of State to await a decision in accordance with the law.

9. Given the factual position as found it appeared to me a material consideration to put before the Secretary of State was whether there should be an extension of stay under paragraph 276A(2) for an additional period to enable the person granted to make the appropriate application for a 'knowledge of life in the UK' test.
10. For the avoidance of doubt, in the light of the issues pursued at the hearing of this appeal, I do not find for my own part that the Appellant would have succeeded on the face of it under paragraph 276ADE nor on the evidence before me under Article 8 of the ECHR.

NOTICE OF DECISION

11. The appeal is allowed to the extent that it is returned to the Secretary of State to await a decision in accordance with the law.

ANONYMITY

12. No anonymity order is necessary to required.

Signed

Date 10 August 2015

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT **FEE AWARD**

Although the appeal has to this extent as set out above succeeded it seems to me that it is not appropriate at this stage for a fee award to be made.

Signed

Date 10 August 2015

Deputy Upper Tribunal Judge Davey