



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: IA/48531/2015

THE IMMIGRATION ACTS

Heard at: Field House
On 8 December 2015

Determination promulgated
On 13 January 2016

Before

Upper Tribunal Judge Gill

Between

Asmoth Miah
(ANONYMITY ORDER NOT MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr S Bellara, of Counsel, instructed by Edward Alam & Associates
For the Respondent: Ms A Fijinjwala, Home Office Presenting Officer.

DECISION

1. The appellant, a national of Bangladesh, has been granted permission to challenge the decision of Judge of the First-tier Tribunal Hawden-Beal promulgated on 18 June 2015 dismissing his appeal under the Immigration Rules and on human rights grounds against the decision of the respondent of 11 November 2014 to refuse his application of 6 March 2014 for leave to remain in the UK on the basis of Article 8 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

2. The appellant's grounds only challenged the decision of the judge to dismiss the appeal under para 276ADE of the Immigration Rules. They did not challenge her decision to dismiss the appeal on human rights grounds outside the Immigration Rules.
3. The appellant claimed to have arrived in the UK in 1989. It was his case before the judge that he had lived continuously in the UK for at least 20 years and that he therefore satisfied the requirements of para 276ADE(1)(iii) of the Immigration Rules.
4. In order to satisfy para 276ADE(1)(iii) of the Immigration Rules, the appellant had to establish that he had lived continuously in the UK for at least 20 years as at the date of his application, i.e. that he had lived continuously in the UK from at least 6 March 1994.
5. The judge heard oral evidence from the appellant, a Mrs. Rinku Begum and a Mr Sultan Ahmed. The appellant's evidence was summarised at paras 5-10 of her decision, Mrs. Begum's at para 11 and Mr Ahmed's at para 12. Mrs. Begum gave evidence that she came to know the appellant following her arrival in the UK in 1997, as a close friend of her father's. Mr Ahmed gave evidence of having known the appellant prior to 1994, from 1991 and perhaps earlier (para 12 of the judge's decision).
6. The judge was not satisfied that the appellant had been continuously resident in the UK for at least 20 years. She gave her reasons at para 16 onwards of her decision. In summary, she noted that, apart from a letter from his doctor to say that he has been registered at his clinic since 2005, there were no official documents to confirm his residence prior to 2005 and only two after that date from 2010. She noted that Mrs. Begum had herself only been resident in the UK for less than 20 years.
7. In assessing his private life claim outside the Immigration Rules at para 17 onwards, she gave further reasons for her finding that the appellant had not established continuous residence for at least 20 years. The judge said at paragraph 18: "*I accept that it is likely that he has been here since 2005, by virtue of his doctor's letter but that is it*". She considered letters of support from other friends but placed little or no weight on them. She also considered the copy of the appellant's passport. Plainly, she did not find it credible that the appellant had submitted copies of certain pages only of his passport, claiming that he had lost his passport. She said that, as she only had copies of certain pages, she could not be sure that there were no entry or exit stamps for other dates in the passport.
8. At no point in her assessment did the judge indicate what she made of the evidence of Mr. Ahmed or why she did not find his evidence credible.
9. I heard briefly from Mr Bellara and Ms Fiwala following which I reserved my decision.
10. I have decided that the judge made one error of law. Given that the judge found that the appellant had not shown that he had lived in the UK continuously for at least 20 years, it follows that she found the evidence before her, including the evidence of Mr. Ahmed, incredible. Although she did not say so in terms, it is nevertheless plain, from her adverse finding on the 20-year residence issue, that she did not find Mr. Ahmed credible.

11. However, the judge failed to give any reasons for not finding Mr. Ahmed's credible. It is plain that his evidence was capable of supporting the evidence of the appellant, that he has lived in the UK continuously since 1989. He gave evidence of having met the appellant prior to 1994: para 12 suggests that he gave evidence that he had known the appellant from 1991 and perhaps even earlier. He gave evidence that he kept in touch with the appellant by telephone once or twice a week and that they meet up 8-10 times a year. There is nothing at all from para 13 onwards of the decision that explains why the judge was not persuaded by his evidence.
12. I am therefore satisfied that the judge failed to given any reasons for not finding the evidence of Mr. Ahmed credible. I am satisfied that this error is material, in that, Mr. Ahmed's evidence, if accepted, was material to the outcome.
13. I do not accept Ms Fijiwala's submission that the judge must have had Mr Ahmed's evidence in mind simply because she had summarised his evidence at para 12. This submission does not address the fact that the judge gave no reasons for not being persuaded by the evidence of Mr. Ahmed.
14. I do not accept Mr Bellara's submission that the judge also materially erred in law by failing to assess the evidence of Mrs. Begum or giving adequate reasons for not accepting her evidence. Mrs. Begum's evidence was that she met the appellant in 1997. She did not give evidence of having met the appellant in 1994 and since. Accordingly, any failure to assess her evidence, taken on its own, was not material to the outcome, albeit that her evidence was capable of supporting the credibility of the evidence of the appellant and Mr Ahmed that the appellant has lived in the UK from 1997.
15. I also do not accept Mr Bellara's submission that the judge materially erred in law in failing to take into account that the appellant's photograph in his passport shows that he was a much younger man at the date of his arrival in the UK, given that the judge noted that, as certain pages only of the passport had been submitted, she could not be sure that there were no entry and exit stamps on the missing pages.
16. For the above reasons, I am satisfied that Judge Hawden-Beal materially erred in law, pursuant to s.12 of the Tribunals, Courts and Enforcement Act 2007, read together with the above Practice Statement. I set aside her decision to dismiss the appellant's appeal under para 276ADE of the Immigration Rules. Her decision to dismiss his appeal outside the Immigration Rules stands.
17. Given that the evidence of the appellant, Mr Ahmed and Mrs. Begum will need to be re-assessed, I am satisfied that this case should be remitted to the FtT with the direction that it not be dealt with by Judge Hawden-Beal.
18. Paras 5-12 of the decision of Judge Hawden-Beal stand as a record of the oral evidence given at the hearing before the judge.

Signed

Date: 31 December 2015

Upper Tribunal Judge Gill