



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/10539/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 25 February 2019**

**Decision &
Promulgated
On 19 March 2019**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

**MR AMARJIT SINGH BASSI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Wilford, Counsel
For the Respondent: Ms S Cunha, HOPO

DECISION ON ERROR OF LAW

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Obhi dismissing his appeal against the decision of the respondent made on 24 August 2017 refusing his application to remain on Article 8 family and private life grounds.
2. The appellant made his application on 15 December 2016 for leave to remain in the UK on the basis of his family life with his partner Surjit Kaur Bassi. The Secretary of State considered that the appellant did not meet the requirements of paragraphs 276ADE(1)(iii)-(iv) because he failed to meet paragraph 276ADE(1)(iii) as he had not resided in the UK for twenty years. Also, he did not meet paragraph 276ADE(1)(vi) because the Secretary of State did not find that there would be very significant

obstacles to his integration in India to which he would have to go if required to leave the UK. The Secretary of State also considered that there were no exceptional circumstances in his case which would render refusal in breach of Article 8 or the ECHR because it would result in unjustifiably harsh consequences for him, his partner, a relevant child or another family member. The Secretary of State further considered that the appellant did not fall for a grant of leave to remain outside the Immigration Rules on the basis of compassionate factors.

3. In the respondent's Reasons for Refusal Letter dated 24 August 2017, under "Immigration History", it said:
 - *October 1998 - you claim to have entered the United Kingdom.*
 - However, at the top of page 4 of the same refusal letter, the Secretary of State stated: *"from the information you have provided, it is noted that you are a national of India and you entered the UK in October 1998."*
4. The judge said at paragraph 13 that at the outset of the hearing Mr Wilford had asked her to accept that the respondent had accepted in the refusal letter that the appellant had been in the UK since 1998 and that if it was not agreed, it was a new issue which would require an adjournment for the appellant to bring his witnesses to court. The judge stated that having looked at the refusal letter she indicated to Mr Wilford that she did not necessarily agree with him that the respondent had accepted that the appellant had been in the UK since that time. As the relevant sentence in the refusal letter referred back to what had been claimed by the appellant and to this being "noted" rather than accepted or indeed rejected.
5. The judge's failure to agree to the adjournment request became an issue of challenge by Mr Wilford. Mr. Wilford argued in his grounds that given the wording of the RFRL, the failure of the judge to proceed on the basis that the respondent had accepted the appellant to have been in the UK since October 1998 amounted to the respondent's unfair reliance upon a new issue. The unfairness was compounded by the judge's refusal to grant the appellant's application to adjourn in light of the raising of a new issue.
6. Ms Cunha on the other hand submitted that the respondent accepted that the appellant entered the UK in 1998 but did not accept that the appellant had lived in the UK continuously since 1998. I find that this was not the position adopted by the HOPO below. At paragraph 28 the judge recorded that Mr. Tallachi noted that the appellant and his wife had not been in the UK lawfully since their arrival which they claimed was in 1998. It appears from this that Mr. Tallachi did not accept that the appellant and his wife had entered the UK in 1998. He did not raise any issue with the appellant's continuous residence since 1998.

7. I accept Mr. Wilford's submission that in the light of what the Secretary of State said at the top of page 4 of the RFRL the respondent had accepted that the appellant had been in the UK since 1998.
8. It was apparent from the determination that the judge could not make up her mind as to whether she should accept that the appellant entered the UK in 1998. That being the case, the judge should have given the appellant the opportunity to provide evidence to support his claim. The appellant's assertion that there existed compelling circumstances in his case to warrant examination of his case outside of the immigration rules required a fair consideration of the factors, including the length of residence in the UK.
9. I accept Mr Wilford's argument that the judge's findings at paragraph 11 were not relevant to the appellant. I find that this was indicative of the judge failing to apply anxious scrutiny to the appellant's case.
10. Mr. Wilford's third argument was that the judge failed to provide clear reasons for her decision. He cited paragraph 34 where the judge held as follows:

I find that the evidence of each of the witnesses I heard from to be wholly unsatisfactory, and basically unreliable. What was apparent was that the appellant had come and gone from the UK illegally for many decades. He had not provided her with any evidence that he was legally in the UK in 1970s, but I don't know the basis upon which he was hear. It may be, and I give him the benefit of the doubt, that he was here legally at that point. It is more likely than not that the appellant and his wife have travelled to and from India, illegally to suit themselves. He may well have come to the UK in 1998. I don't make that finding because I don't accept that I am being told the truth so I have to look at all the other facts, but even if he did come to the UK I 1998, I am not satisfied that he did not leave and then return to suit himself.

11. I accept Mr. Wilford's submission that there was absence of evidential basis for the conclusion that the appellant and his wife may have entered and exited the UK since their arrival in 1998. I find that Mr. Wilford's arguments hark back to the judge's failure to accept that the appellant and his wife entered the UK in 1998 and have been here since. I find that the judge strayed from the issues that she had to consider.
12. Accordingly, I find that the judge erred in law in her decision. The judge's decision cannot stand. It is set aside in order to be remade.
13. The appellant's appeal is remitted to Taylor House for rehearing by a First-tier Judge other than FtJ Obhi.

No anonymity direction is made.

Signed

Date: 14 March 2019

Deputy Upper Tribunal Judge Eshun