Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/08657/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 21st January 2020	**On 27th January 2020**

Before

UPPER TRIBUNAL JUDGE COKER

Between

QAYAM UDDIN

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Chohan, Direct Access
For the Respondent: Mr P Singh, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant's appeal against the decision of the respondent refusing his human rights claim was dismissed by First-tier Tribunal Judge Munonyedi for reasons set out in a decision promulgated on 30th July 2019.

   Background

2. The appellant had sought leave to remain on 24th October 2017 outside the Rules after an appeal for leave to remain had been dismissed and he had

become appeal rights exhausted on 16th October 2017. That application for leave to remain was subsequently varied to an application for leave to remain on the basis of 10 years lawful residence. The application was refused by the respondent for reasons set out in a decision dated 2nd May 2019. The respondent referred to the appellant having demonstrated dishonest conduct in submitting a TOEIC certificate fraudulently obtained and that he had not resided lawfully in the UK for 10 years. The appellant appealed and his appeal was dismissed.

3. Permission to appeal was sought and granted on a number of grounds, including that it was arguable an adjournment should have been granted, that the judge had failed to correctly apply the Devaseelan principles and had failed to give proper reasons.

Error of law

4. Just before the appeal hearing to the First-tier Tribunal, the appellant sought an adjournment on the ground that he was suffering pain from a fall, supported by a doctor's note that he had presented suffering from pain. The application was refused, one of the reasons being cited that he had failed to provide evidence that he was unfit to attend the hearing. Nevertheless, he did not attend the hearing and produced no explanation for such failure to attend. Nor did he renew his application for an adjournment. The appeal was thereafter treated as a paper appeal, the respondent confirming that she was content for the appeal to proceed in the absence of a presenting officer.

5. The judge was entitled, in the light of the evidence before him to proceed with the hearing in the appellant's absence.

6. The appellant had been sent directions by the First-tier Tribunal to file and serve such further evidence as he sought to rely upon. He did not file any such evidence. The appellant did not provide an explanation for failing to provide such evidence as he relied upon. The judge was entitled to reach a decision on the basis of the evidence before him which included a copy of the appellant's previous appeal decision.

7. The judge who heard the previous appeal (First-tier Tribunal Judge Ross in a decision promulgated on 1st February 2017) reached a conclusion that the appellant had not provided an innocent explanation and that the decision of the respondent to refuse him leave under paragraph 322 (2) Immigration Rules was lawful. The appellant did not produce any evidence to First-tier Tribunal Judge Munonyedi that could be considered, in accordance with the *Devaseelan* principles, to enable a departure from the findings of First-tier Tribunal judge Ross. The appellant does not in his grounds of appeal identify any such evidence that was before the First-tier Tribunal judge which was not taken into account. There is no error of law by the First-tier Tribunal judge in maintaining the decision of the First-tier Tribunal judge who heard the appeal in 2017 that the appellant had not taken the test as he claimed.

8. Although permission to appeal was granted to the appellant on the basis that it was arguable the decision was inadequately reasoned, it is difficult to ascertain what else the judge could have said. The appellant had not produced evidence of any significant private or family life; he had not been lawfully resident in the UK for 10 or more years; he had been resident in India for the majority of his life and he had not produced any significant evidence that he would have difficulties reintegrating into India; the previous First-tier Tribunal decision had concluded he had fraudulently obtained a language certificate.

9. The judge has considered the evidence before him and reached a decision that was plainly open to him. The paucity of evidence could not lead to any more detailed reasons being given.

10. Mr Chohan eloquently referred to evidence that, he submitted, ought to have been before the First-tier Tribunal judge but was not. He acknowledged that the appellant ought to have attended the hearing but that there was no explanation why his then solicitors had not informed him of that. Nevertheless, it cannot be an error of law for the First-tier Tribunal judge to fail to grant an adjournment in the circumstances before the First-tier Tribunal judge; it cannot be an error of law for the First-tier Tribunal judge to fail to consider evidence that was not before her.

11. There is no error of law by the First-tier Tribunal Judge.

Addendum

12. It seems there may have been evidence that could have been but for some reason was not put before the First-tier Tribunal or sent to the respondent. No doubt the SSHD will consider this evidence if a further application is made.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision; the decision of the First-tier Tribunal judge dismissing the appeal stands.

Date 22nd January 2020

Upper Tribunal Judge Coker