Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-003134
(HU/05674/2020)

THE IMMIGRATION ACTS

Heard at: Field House
On: 28 October 2022

Decision & Reasons Promulgated
On: 3 December 2022

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

RUHUL AMIN
(no anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Chowdhury of KC Solicitors
For the Respondent: Ms S Lecointe, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Bangladesh, born on 1 June 1972. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his human rights claim.

2. The appellant claims to have entered the UK on 29 June 1998 with a passport provided by an agent. On 10 December 2009 he applied for leave to remain in the UK on family/ private life grounds but his application was refused without a right of appeal. He attempted to appeal against the decision, but the appeal was struck out. On 20 June 2014 he submitted a statement of additional

grounds seeking leave to remain but his claim was refused on 24 October 2014 and was certified as clearly unfounded under section 94 of the Nationality, Immigration and Asylum Act 2002. He sought to challenge the decision in a judicial review claim but permission was refused on 23 November 2015.

3. On 29 October 2019 the appellant, through his solicitors, made a human rights claim on the basis of his private life in the UK, claiming that he had been living in the UK continuously for 21 years and 4 months, since 29 June 1998. It was claimed that he could not return to Bangladesh as he was fully integrated into his local community in the UK and had no contact with family in Bangladesh. It was claimed that he had never returned to Bangladesh since coming to the UK, that he would have no support there and would be destitute and homeless, and that he had close friends and family in the UK. Supporting letters were produced from friends and work colleagues. It was claimed that the appellant met the requirements of paragraph 276ADE(1) of the immigration rules on the basis of his length of continuous residence in the UK and on the basis of very significant obstacles to his integration in Bangladesh, and that there were exceptional circumstances outside the immigration rules making his removal to Bangladesh disproportionate under Article 8 of the ECHR.

4. The appellant's application was refused by the respondent on 24 April 2020. It was not accepted that he had been living continuously in the UK for at least 20 years, that there were very significant obstacles to his integration in Bangladesh or that there were exceptional circumstances outside the immigration rules. The respondent considered that the evidence produced by the appellant only established that he had been in the UK since 2009 and considered there to be no evidence to demonstrate that he had arrived in the UK in 1998 as claimed.

5. The appellant appealed against the decision and his appeal was heard on 8 December 2021 by First-tier Tribunal Judge Young-Harry and was dismissed in a decision promulgated on 12 January 2022. The judge was provided with a bundle of documents from the appellant which included witness statements, a medical card, prescriptions and photographs as well as GP records. The appellant gave evidence before the judge, as did three witnesses on his behalf. The judge accepted that the appellant had established a private life in the UK and that Article 8 was engaged. She noted that the appellant was relying upon a 20 year period of residing in the UK continuously from 2001 to 2021. On the basis of the appellant's GP records she accepted that he had been living in the UK continuously since 2006. She also accepted that there was evidence in the form of an NHS medical card dated 7 September 2001 and a Bangladeshi passport issued by the High Commission in London on 4 July 2001 which confirmed that the appellant was resident in the UK in 2001, but she found there to be no supporting documentary evidence to confirm his presence in the UK between September 2001 and 2006. The judge considered that, since the appellant had had access in the past to passports arranged by agents, she could not exclude the possibility that he had left the UK and re-entered at some stage. She therefore concluded that the appellant had failed to show that he had been living continuously in the UK for 20 years. The judge found further that the appellant had failed to show that there would be very significant

obstacles to his integration in Bangladesh and concluded that the respondent's decision did not disproportionately interfere with his Article 8 rights.

6. Permission to appeal to the Upper Tribunal was sought on behalf of the appellant on the grounds that the judge's findings on his continuous presence in the UK between 2001 and 2006 were based on suspicion and speculation; that the judge erred by not accepting continuous corroborating evidence; that the judge ignored the quality of evidence submitted in support of his application and failed to apply the flexible approach set out in Khan, R (on the application of) v Secretary of State for the Home Department [2016] EWCA Civ 416; and that the judge misconstrued the evidence of the witnesses.

7. Permission was granted in the First-tier Tribunal 28 March 2022.

Hearing and Submissions

8. The matter came before me for a hearing.

9. Mr Chowdhury made a request to submit new evidence which had not been before the First-tier Tribunal, namely the appellant's GP records covering the period 2001 to 2006. He accepted that that was only relevant if the decision in the appeal was to be re-made, and that it was not relevant to the error of law issue. In the circumstances I did not consider that evidence and neither did Ms Lecointe.

10. Both parties made submissions.

11. Mr Chowdhury submitted that, given that there was no evidence before the judge that the appellant was absent from the UK for period 2001 to 2006, she ought to have given him the benefit of the doubt and had erred by speculating when finding that he may have been absent from the UK. Mr Chowdhury referred to the judge's acceptance of the findings in Khan to the effect that the appellant may not have official documentation to rely upon and submitted that she had erred by ignoring the quality of the evidence which was before her, and which included an NHS card from 2001 and the previous GP records as well as the evidence of the witnesses which she had not taken into account.

12. Ms Lecointe submitted that there was no caselaw which compelled a judge to exercise leniency or to give the benefit of the doubt to the appellant. The judge made sound observations in relation to credibility, noting inconsistencies in the evidence of the witnesses, and was within her rights to make the decision that she did.

13. In response, Mr Chowdhury reiterated his point that the benefit of the doubt should be given to the appellant and that the decision could simply be re-made by allowing the appeal on the basis of the evidence now available rather than making him spend a lot of money on making a fresh application.

14. I advised Mr Chowdhury that I could not simply find an error of law in the judge's decision when one did not exist, just so that the appellant's further

evidence could be considered. I declined to set aside Judge Young-Harry's decision. I set out my reasons as follows.

15. Mr Chowdhury's submission was that the judge ought to have given the appellant the benefit of the doubt. However he failed to point to any authority for such a proposition. As Ms Lecointe submitted, there is no such authority. On the contrary, the burden of proof lies upon the appellant to make out his case. Mr Chowdhury's submission, that the judge ought to have had regard to the lack of evidence of the appellant's absence from the UK and given him the benefit of the doubt on that basis, effectively amounted to a reversal of the burden of proof. There was no proper reason for the appellant's failure to produce all the relevant evidence before Judge Young-Harry. He had had the benefit of legal advice and representation prior to, and at the hearing, and would no doubt have been made aware by his representatives of the nature of the evidence that was required to demonstrate his claimed continuous residence in the UK. The respondent's refusal decision made it perfectly clear what evidence was required. There was no reason why the judge ought to have made assumptions in the appellant's favour in the absence of supporting evidence. Accordingly I find no merit in the submission made by Mr Chowdhury in that regard.

16. Neither is there any merit in the assertion that the judge's decision was impacted by suspicion or speculation and that she ignored the quality of the evidence. On the contrary, the judge had full and careful regard to the evidence and provided full and proper reasons for concluding as she did. She clearly gave full weight to the evidence which supported the appellant's case, but was nevertheless otherwise fully entitled to draw adverse conclusions from the gaps in the evidence, giving full and cogent reasons, at [15] to [21] of her decision, for doing so. At [16] she noted discrepancies about the appellant's passport and an absence of evidence relating to a previous passport issued in 1997; at [17] she gave reasons why the photographs produced by the appellant were of little assistance; at [18] to [20] she noted various inconsistencies in the evidence of the three witnesses; and at [21] she noted a lack of reasons for an absence of official documentation during the relevant period when there had otherwise been a significant amount of evidence for other periods of residence. Whilst the grounds assert that the judge was relying on suspicion and speculation when stating that she could not exclude the possibility that the appellant had left the UK and re-entered at some stage during the period in question, that was clearly not the case. The judge's comment in that regard was plainly founded upon the evidence, namely the evidence that the appellant had previously had access to passports arranged by agents. In the circumstances I reject the assertions made on behalf of the appellant that the judge's findings failed to take full account of the evidence or were not open to her on the evidence.

17. For all of these reasons I do not consider that any error of law arises from Judge Young-Harry's decision. The judge had full and careful regard to all relevant matters, she undertook a detailed assessment of the evidence, she had regard to the relevant caselaw and guiding principles therein and she made cogently reasoned findings on the evidence before her. She was fully and

properly entitled to dismiss the appeal on the basis that she did. Her decision is accordingly upheld, and the appellant's appeal is dismissed.

DECISION

18. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede Dated: 28 October 2022