



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005482
First-tier Tribunal No:
HU/57450/2021
IA/16721/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 24 July 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SWINDER SINGH DHALIWAL
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Heard at Birmingham Civil Justice Centre on 18 July 2023

For the appellant: Mr S Khan, Principal Solicitor at SMK Solicitors.
For the respondent: Mr Lawson, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Parkes ('the Judge'), promulgated following a hearing at Birmingham on 16 September 2022, in which the Judge dismissed the appeal against the refusal of the appellants application for leave to remain on the grounds of long residence.
2. The Judge records at [9] that it was accepted by the appellant's representative that the principal issue was the appellant's length of residence. It was submitted on the appellant's behalf that he had produced sufficient evidence to show he had lived in the UK since his arrival in the UK.
3. The appellant is a citizen of India born on 15 March 1970 who claimed he entered the UK on 15 January 2000 via Dover and has remained here since. The respondent's position is that the appellant had not been continuously resident in the UK for over 20 years.
4. In addition to the documentary evidence the Judge had the benefit of seeing and hearing the appellant and his witness Mr Shamsheer Gill give oral evidence.

5. The Judge refers to the medical and dental hospital records, together with other documentary evidence filed in support of the appellant's claims in the main bundle and supplementary bundles. At [16 - 18] the Judge writes:
 16. At best the evidence shows that Appellant has been resident in the UK since January 2014. That he may have been in the UK at times before shown by some of the evidence but the evidence does not show that the Appellant arrived in 2000 as claimed or that he has been continuously resident since then. The evidence in support is couched in vague and generalised terms and there is very little supporting evidence. The photographs, said to be from 2003 stand in isolation and highlight the absence of other evidence that might have been expected to cover the period in question such as other photographs and evidence of the Appellant attending other significant events.
 17. The main obstacle to integration or reintegration are the ability to live lawfully in a country and speak a language of the place in question. The Appellant still prefers to speak Punjabi at has in Indian passport. In managing to remain in the UK since 2014 when here illegally and not speaking English as a main language he has shown that he is adaptable and resourceful and there is no reason why he could not use those talents on return to India. There are no significant obstacles to the Appellants reintegration to India.
 18. The application was based on the Appellant's private life, it is not suggested that the Appellant has established a family life in the UK. His private life is limited and even if article 8 is engaged by it, which I find it is not, his private life is not of such strength or durability that the public interest in his removal and the enforcement of immigration control is outweighed. There is nothing in the limited evidence that could be said to be compelling that would justify a grant of leave outside the Immigration Rules.
6. The grounds of appeal assert the Judge erred in law at [2] in failing to apply and/or outline the correct burden of proof, in failing to have regard to material evidence, specifically the supplementary evidence consistent with the Appellant's dental records and failing to give adequate reasons or proper weight to the witness evidence.
7. Permission to appeal was granted by another judge of the First-tier Tribunal on 15 November 2022.

Discussion and analysis

8. Ground 1 asserts procedural unfairness arguing the Judge failed to apply the correct burden of proof. The grounds assert that insofar as it is accepted it is for the appellant to show he meets the continuous resident requirement, if the respondent considers a period in the UK does not count as continuous residence the burden shifts to her. The appellant asserts the respondent specifically raised an issue with two periods of continuous residence for the years 2000 to 2010 and 2012 to 2013.
9. It is settled law that if a person claims to be entitled to a grant of leave to enter or remain in the UK under the Immigration Rules the burden is upon that person to establish they can satisfy the relevant rule unless there is specific provision reversing the burden. The appellant claimed he was entitled to remain in the United Kingdom on the basis of long residence pursuant to paragraph 276 ADE(iii) which requires that person to prove they have lived continuously in the UK for at least 20 years (discounting any period of imprisonment).
10. The grounds refer to the guidance to caseworkers. Set out in the respondent's review is the following:

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Family Policy: Version 16

Evidence of residence

To demonstrate length of residence in the UK, applicants will need to provide evidence of their residence here for the period they seek to rely on. Official documentary evidence from official or independent sources, that show ongoing contact over a period of time, for example from a housing trust, local authority, bank, school or doctor, will be given more weight in the decision-making process than evidence of one-off events. The decision maker must be satisfied the evidence provided has not been tampered with or otherwise falsified, and that it relates to the person who is making the application. To be satisfied that the UK residence was continuous, the decision maker should normally expect to see evidence to cover every 12-month period of the length of claimed continuous residence, and passports or travel documents to cover the entire period, unless satisfied on the basis of a credible explanation provided as to why this has not been submitted.

11. It is clear that the guidance places the burden upon the individual claiming to have the necessary period of residence. The finding of the Judge is that the appellant had not done enough to satisfy him that he had been in the UK for at least 20 years. Mr Khan was unable to refer me to any specific finding by the Judge that indicated the Judge had misapplied the burden of proof. What this ground seems to be suggesting is that the only burden upon the appellant is to prove what he can prove and that if he has not produced sufficient evidence, and there is therefore a gap in the evidential matrix, that it is for the Secretary of State to prove he has not been present in the UK for that period. There is no legal basis or authority to which I have been referred to support such a proposition. A claim the burden fell upon the Secretary of State to cover evidential deficiencies in the appellant's own case is not made out and does not establish legal error in the Judge's approach.
12. I accept that the burden, when considering an Article 8 ECHR claims if a judge finds that either family or private life is engaged, is different. It is then for the Secretary of State to consider whether any interference with a protected right is proportionate. The primary finding of the Judge at [17] is that the appellant's private life is limited and that even if Article 8 is engaged his private life is not of such strength or durability that the public interest in his removal and enforcement of immigration control is outweighed. It is not made out the Judge applied an incorrect burden or standard of proof in coming to such conclusions.
13. Ground (ii) asserts a failure to have regard to material evidence. The ground asserts the Judge failed to note that an entry for 01/01/1980 in the dental records were generic entries and that there are specific clinical/dental notes from 20/12/2002 until 24/03/2003 and it is claimed patient notes for the period 26/11/2004 and 05/05/2011. The appellant's case is that these documents were crucial to the appellants case and that the Judge erred in law by failing to have proper regard to the material evidence and in failing to give adequate reasons as to why the evidence was not satisfactory.
14. The argument that this ground is strengthened by Ground (i) has no merit as it is not accepted the Judge failed to apply the correct burden of proof.
15. The Judge clearly considered the evidence with the required degree of scrutiny including the dental records. At [7] is reference to the appellant adopted his witness statement, giving evidence as to where he had lived, and not knowing about the reference to 1980 in the dental records. At [10] the Judge refers to the main bundle containing medical evidence and dental hospital and optician's appointments from 2015 onwards. At [13] of the decision the Judge refers to the appellant's supplementary bundle in which are his dental records and in relation to which the Judge writes "*They do contain a number of entries for 1980 which*

cannot be explained and do serve to lessen the reliability of the document overall. The first entry is that the Appellant relies on start on 20 December 2002 and treatment is recorded until is takin place until March 2003". I find no merit in the argument the Judge failed to consider such evidence or factor it into the decision-making process.

16. Mr Khan was asked at the hearing whether the evidence being referred to was the letter from the White House Dental Practice printed on 18/07/2022 at 12:23, which he confirmed it was. That document is in the bundle before me. I do not accept the argument the Judge erred as the dental records refer to treatment in 2004 and 2011. The entry for 26/11/04 at 16:04 hours records a balance brought forward credit of £76.04 rather than referring to any treatment and on 06/05/11 at 14:052 "boxed off box 18 - 2011". Perhaps indicating that that was the date at which the account was closed but, again, not referring to any treatment.
17. The letter does refer to 01/01/80 which, if it refers to 1980, cannot refer to the appellant as he was not in the UK at this time. The concern would be that they refer to another. The argument in the grounds that the Judge should not have raised this point as they are only generic entries does not appear to have any merit. There are, for example's reference to an unknown filling, missing tooth, retained root, root filling, and three further unknown filling - surface entries. These appear to be recording the results of an examination of a patient and what was found on that examination.
18. Other entries relate to 20/12/02, referring to the course of treatment including extraction - surgery, resin filling, root fillings, amalgam fillings, second extraction, and a second resin filling and on 02/7/2003 there is reference to NHS exam/report and the clinical note of NHS treatment of a patient on referral. There appears to be then a list of missing teeth in a particular patient, possibly 28 missing teeth (normal adult number of teeth is 32). Later on in the document are entries for 11/10/02 recording extractions and further fillings, photographs, examination, root fillings, etc. The treatment plan of 24/03/03 indicating a number of bonded (gold or precious (remainder sentence has not been copied/printed)) with extractions, bonded porcelain retainers and a whole list of treatment which appears to relate to more teeth than an individual who would have had 28 extractions or missing teeth would require. [That is not a matter however that appears to have been raised before the Judge and I recorded it as a matter of comment only].
19. In relation to the claim the Judge did not consider this evidence properly I find the same has no merit.
20. Ground (iii) asserts the Judge failed to give adequate reasons or proper weight to the witness evidence. The grounds claim the Judge failed to give any reason as to why the evidence of Mr Gill was not credible and that there are no findings in relation to his evidence which is said to be crucial to the outcome of the appeal. The grounds assert the Judge failed to give proper weight to the witness evidence and/or provide adequate reasons as to why the same was not acceptable.
21. It is settled law that the weight to be given to the evidence is a matter for the Judge. Mr Khan was unable to refer me to any aspect of the decision that suggested the Judge's assessment or application of the weight that he thought appropriate was in any way irrational or outside the range the Judge was entitled to attach to it. Mr Khan confirmed that the appellant's case was simply that the evidence was not properly considered by the Judge.
22. The Judge notes that Mr Shamsheer Gill attended the hearing and gave evidence. He adopted his witness statement and claimed that the appellant had lived above the shop that he had in London, although he himself lived elsewhere, and that he saw the appellant almost daily as the appellant helped to make tea and food before the appellant moved. Mr Gill's evidence was that after this date he would

see the appellant who did his gardening and that after 2011 when the appellant moved to the Midlands they kept in touch by telephone.

23. The Judge did not find evidence of this witness determinative. The Judge's findings refer to other aspects of the evidence relied upon by the appellant in support of his claim but did not find that the evidence, cumulatively, did so. The Judge was not required to find a witness lacked credibility as witnesses can be telling the truth but the truth of what they speak of, when combined with other material, is insufficient to discharge the relevant burden of proof. That is clearly the Judge's finding in this appeal.
24. The Judge records concerns regarding the dental evidence and clearly did not find that determinative for which reasons are given. It was found the medical evidence showed that, at best, the appellant had been resident in the UK since January 2014 and that although he may have been in the UK at times before then, as was found to be shown by some of the evidence, the evidence did not show that he arrived in 2000 as claimed or that he had been continuously resident since then [16]. That finding is adequately reasoned. The evidence of Mr Gill was not found by the Judge to warrant any more weight than was given to it and was not found to be determinative as Mr Khan suggests it should have been.
25. Mr Lawson's submission that the grounds are no more than disagreement with the findings of the Judge, who properly considered the evidence and has made findings supported by adequate reasons, has merit.
26. Having considered the matter afresh I find the appellant has failed to establish legal error material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in this matter.

Notice of Decision

27. The First-tier Tribunal has not been shown to have erred in law in a manner material to the decision to dismiss the appeal. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 July 2023

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