



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004976

First-tier Tribunal No: HU/51348/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

17th January 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE WELSH

Between

PARGAT SINGH
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Mustafa of Counsel
For the Respondent: Mr Basra, Senior Home Office Presenting Officer

Heard at Field House on 23 June 2023

DECISION AND REASONS

Introduction

1. The Appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Quinn (“the Judge”), promulgated on 19 October 2023, dismissing his human rights appeal.
2. No anonymity order was made previously and there is no need for one now.

Factual background

3. The Appellant is a national of India. On 30 May 2022 he applied, insofar as is relevant to this appeal, for leave to remain based on his private life relying on paragraph 276B of the Immigration Rules.
4. His application was refused by the Respondent on 13 February 2023, on the ground that he had provided insufficient evidence to demonstrate 20 years of

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residence in the United Kingdom ('UK'). As well as noting the limited corroborative evidence, the Respondent took into account that the Appellant's claim to have resided in the UK since 1995 was inconsistent with earlier accounts he had given to the police: when stopped by the police in 2006, he had stated he arrived in the UK in 2005; when stopped in 2012, he had stated that he arrived in the UK in 2003.

Decision of the Judge

5. The Judge found the account of the Appellant and his witnesses (one who gave oral evidence and one whose evidence was in the form of a letter) not credible. His reasons were, in summary, as follows:
- (1) the Appellant entered the UK illegally [24];
 - (2) the Appellant provided no documentary proof that he had entered the UK in 1995 [25];
 - (3) the Appellant had given different dates of his arrival in the UK to the police [26] and, the Appellant having had no reason to lie about when he came to the UK when speaking to the police, the dates given, namely 2003 or 2005, were likely more accurate than his current claim to have arrived in 1995 [36];
 - (4) the Appellant had failed to sign on with the Home Office when required to do so [27];
 - (5) the Appellant made an asylum claim late [28];
 - (6) the evidence of the Appellant's witness (who gave oral evidence) was undermined by the lack of credibility of the Appellant's own evidence [30];
 - (7) it is unlikely that the Appellant would have not come to the attention of the authorities until 2006 if he had actually been in the country since 1995 [31];
 - (8) a lack of evidence about how the Appellant had survived between 1995 and 2008 (which is when his witness gave evidence that he had been supporting him) [34]; and
 - (9) a general lack of reliable evidence in support [33, 34].

Grounds of appeal and grant of permission

6. The grounds, which I have numbered, plead that the Judge erred in that:
- (1) in assessing the credibility of the Appellant, he took into account irrelevant considerations, namely that the Appellant (i) entered the UK illegally and (ii) delayed making his asylum claim (ground 1);
 - (2) he gave inadequate reasons for rejecting the evidence of the Appellant's witness (ground 2); and
 - (3) relied upon material that was not evidence, namely the assertion by the Respondent in the refusal decision that the Appellant had given inconsistent accounts about his date of arrival in the UK when stopped by the police.
7. Permission was granted by First-tier Tribunal Judge Chowdhury on 21 November 2023. The grounds upon which permission was granted were not restricted.
8. The Respondent did not file a rule 24 response.

Upper Tribunal hearing

9. Mr Mostafa relied upon his skeleton argument and both advocates made oral submissions. I address the points they made during the course of this decision.

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10. At the conclusion of the hearing, I determined that the decision of the Judge involved the making of a material error on a point of law. I now set out my reasons.

Analysis and conclusion

Ground 1

11. Mr Mostafa submitted that the very purpose of paragraph 276B of the Immigration Rules was to provide a route for leave to remain for those people who had entered the UK illegally and had remained without permission. Consequently, there was no proper basis for the judge to take into account the fact of the illegal entry or the failure of the Appellant to report to immigration officials. In relation to the delay in claiming asylum, this could not be relevant for the same reason and additionally, the judge had no information as to whether the section 8 point (of the Asylum and Immigration (Treatment of Complainants, et cetera) Act 2004) had been relied upon in the refusal of the asylum application.
12. Mr Basra accepted that the illegal entry and late asylum application were irrelevant but submitted that the other factors relied upon by the judge were relevant.
13. In my judgment, the Judge's reliance on the illegal entry, avoidance of immigration control and late asylum application were plainly not relevant considerations in the assessment of the Appellant's credibility, for the reasons submitted by Mr Mustafa. It follows that the Judge erred in assessing credibility. In terms of materiality, some of the factors relied upon by the Judge were plainly sound, for example, the witness statement of the Appellant was brief and the evidence in support was limited. However, I cannot be satisfied that, if the judge had not taken into account the irrelevant considerations, he would have reached the same conclusion in respect of the credibility of the Appellant or indeed the Appellant's witness.
14. Given my conclusions in relation to ground 1, I do not need to address the remaining grounds.

Notice of Decision

15. The decision of the First-tier Tribunal involved the making of a material error on a point of law and so I set aside the decision.
16. My provisional view, expressed at the hearing, was that the appeal should be heard at the Upper Tribunal. However, on reflection, I agree with the submission of Mr Mustafa that the error in the assessment of credibility affected all findings of fact by the Judge. Consequently, I conclude that the appropriate forum for the necessary further hearing of this appeal is the First-tier Tribunal (not to be listed before First-tier Tribunal Judge Quinn) because the nature of the error is such that no findings of fact can be preserved. In reaching this decision, I apply paragraph 7.2 of the Senior President's Practice Statement and take into account the oral submissions of both advocates. Accordingly, the appeal is remitted to the First-tier Tribunal.

C E Welsh
Deputy Judge of the Upper Tribunal

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