



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

Case No: UI-2024-004590

First-tier Tribunal No:
HU/64504/2024
LH/04346/2024

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 31 December 2024**

Before

**UPPER TRIBUNAL JUDGE GREY
DEPUTY UPPER TRIBUNAL JUDGE DURANCE**

Between

PUSPAM ELANGEERAN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A. Walker, Counsel instructed by Shan & Co
For the Respondent: Mrs A. Nolan, Senior Home Office Presenting Officer

Heard at Field House on 10 December 2024

DECISION AND REASONS

1. This is an appeal brought by the appellant against the decision of First-tier Tribunal Judge Sullivan ('the Judge') dated 18 July 2024, in which she dismissed the appellant's appeal in respect of the respondent's decision to refuse his human rights claim.

Factual Background

2. The appellant is a national of Sri Lanka who is 52 years old. He entered the UK on 22 February 2000 and made an asylum claim. His asylum claim was refused and following an unsuccessful appeal he became appeal rights exhausted on 22 June 2022.
3. The appellant made a number of further submissions between 6 March 2013 and 13 December 2019 before his most recent human rights application made on 4 July 2022 which is the subject of this appeal.
4. The appellant's application based on his long residence in the United Kingdom was refused by the respondent on 8 December 2023. The appellant's appeal was heard via CVP on 18 July 2024 and was dismissed in the decision promulgated that day.

The decision under appeal

5. The Judge heard oral evidence from the appellant and his sister and recorded that she did not find them to be "wholly reliable" witnesses and referred to two specific aspects of the evidence which gave rise to concerns. One issue was the discrepancy between the evidence of the appellant and his sister regarding what relatives they have in Sri Lanka. Another matter on which the Judge identified concerns was the sister's evidence about whether she was aware of the appellant living in Wales for a period and whether she had seen him whilst he lived in Wales.
6. The Judge recorded in the decision that the respondent's presenting officer at the hearing stated the appellant had been on reporting conditions "on and off" but there had been a gap between 2002 and 2009.
7. In relation to documentation provided by the appellant in support of his appeal the Judge noted an absence of medical records despite the appellant stating that he had undergone surgery in the period 2002-2003 and thereafter attended his GP for checks "from time to time". She also noted an absence of documentation in respect of the appellant's employment given that the appellant stated he had engaged in some building work over time. Further, the letters from friends who claim to have given money to the appellant only dated back to 2022.
8. In relation to the letter provided from the Tamil Community Centre dated 18 December 2013, the Judge stated that the author only comments on the appellant's circumstances in the preceding three weeks and gave no indication of whether the appellant was known to that centre for any longer period of time.
9. Having regard to the evidence before her the Judge found the appellant had been continuously present in the United Kingdom since his arrival in February 2000 until a "date on or about the end of 2002" and has been continuously present from March 2013 up until the date of the hearing. Thus the Judge found an absence of evidence of the appellant's continuous

presence in the United Kingdom between the start of 2003 and March 2013.

10. In respect of the submission from the appellant's representative that there would be records if the appellant had left the United Kingdom at any point after his arrival in 2002 the Judge states at [19]:

"I take it to be a matter of general knowledge in this jurisdiction that the Respondent has not always recorded departing travellers and that many people cross international borders without being processed at formal border controls."

11. Having found that the appellant had failed to establish 20 years continuous residence in the UK the Judge then found that the appellant had also failed to establish that he would face very significant obstacles to his integration into life in Sri Lanka given, she found, the presence of family members there and that his preferred language is still Tamil. The Judge found that the appellant and his sister and her son do not share family life for the purposes of Article 8(1) ECHR and, having attached little weight to the private life the appellant has established in the UK, that the interference with his private life arising from the respondent's refusal was not disproportionate and did not give rise to unjustifiably harsh consequences.

The grounds of appeal

12. We summarise and re-organise the lengthy grounds of appeal as follows:
 - 1) The Judge failed to note that the letter from the Tamil Community Centre from 2013 referred to them assisting the appellant "*with different matters throughout the years*";
 - 2) The Judge failed to take account of the respondent's "concession" relating to the appellant's reporting record;
 - 3) The Judge failed to give adequate or any reasons for finding the appellant to be unreliable regarding his claim of long residence and failed to direct herself in accordance with R v Lucas [1981] QB 720 referred to by the Court of Appeal in the context of asylum claims in Uddin v Secretary of State for the Home Department [2020] EWCA Civ 338;
 - 4) The Judge failed to decide the appeal based on the evidence before her and instead determined long residence on the basis of the absence of supporting evidence and there was procedural unfairness in failing to put these matters to the appellant (or there is no indication this was done);
 - 5) The Judge's reasoning at [19] relating to the ability of persons to leave and cross international borders without being recorded was speculative and without any evidential foundation particularly regarding the appellant and the period in question; and

- 6) In respect of Article 8, the asserted errors of the Judge regarding the appellant's long residence in the UK materially 'impugned' her assessment of very significant obstacles to integration and unjustifiably harsh consequences; the Judge failed to take into account material factors such as the appellant's poor mental health and his support for his sister following the death of her husband; and failed to conduct a proper balancing exercise.
13. Permission to appeal was granted by First-tier Tribunal Judge O'Garro on 5 October 2024 in the following terms:
- " 2. The grounds of appeal assert that the judge failed to properly evaluate the evidence in the round in her assessment of the appellant's claim to 20 years continuous residence. That the judge failed to give adequate reasons; failed to take into account relevant matters, failed to apply appropriate weight to the evidence and made findings based on speculation rather than evidence.
3. I consider that the matters raised, identify arguable challenges to the judge's decision. Permission is granted."

Analysis and decision

14. It is apparent from the decision that the issue of the appellant's 20 years continuous residence was largely determined by the Judge on the basis of an absence of evidence in relation to the period 2003 to March 2013. The burden of proof is on the appellant to establish his claim on the balance of probabilities. The grounds assert that the Judge erred in determining "long residence on the basis of the absence of supporting evidence". We do not accept that this can be an error in itself. We find that the Judge determined that the appellant failed to discharge the burden of proof upon him due to an absence of evidence.
15. However, we do take into account the difficulties that an appellant is likely to face in obtaining supporting documentation in relation to their period of residence when they have been residing without leave to do so. Further, it is of course incumbent upon any decision maker to consider the evidence that is before them with anxious scrutiny. In this regard we turn to consider ground 1 (as set out above) which relates to the letter from the Tamil Community Centre dated 18 December 2013. The Centre is based in Hounslow. The letter appears to have been written to advocate on the appellant's behalf in respect of his medical issues at that time. The letter requests that the appellant is checked in A&E prior to being registered with a GP because he had not yet registered with one since he moved to Wales. It is understood from the oral evidence that the appellant moved to Wales in 2010 or 2011. The letter states:

"I am writing to you with reference to the above mentioned client's health scare. He is a member of our Tamil Community and we have been **assisting him with different matters, through out** (sic) **the years**.

In the last 3 weeks he has developed a strange type of pain in his upper left arm.....

We at the Tamil Community Centre are trying to get him register with the GP (as he doesn't have one, since he moved to The Wales (sic)...."

16. In relation to this evidence at [15 c] of the decision the Judge states that the author of the letter comments on the appellant's circumstances in the previous three weeks but that "*It gives no indication of whether the Appellant was known to that centre for any longer period of time.*". We are of the view that this statement is factually incorrect and the Judge erred in her assessment of this evidence. Although the letter does not state exactly when the appellant became known to the Centre, it is clear that his association with them extends back well beyond the preceding three weeks given the reference to providing him with assistance "*throughout the years*".
17. We consider that the fact the letter was prepared in order to assist the appellant in relation to his medical issues in 2013 rather than to support him in his appeal would tend to indicate the evidence is reliable in relation to the appellant's association with the Centre, if imprecise. Further, the fact the letter was written to support the appellant's assistance at hospital rather than to support his appeal is likely to be why the author did not consider it necessary to identify precisely when the appellant's association with the Centre commenced. We certainly accept, however, that it would have been in the appellant's interests to have sought a more up to date and precise letter from the Community Centre for the purposes of his appeal.
18. In the absence of further information detailing the start of the appellant's dealings with the Tamil Community Centre it cannot be said that the letter in itself, without more, would have been sufficient to address the entire period from 2003 to 2013. However we find that, if correctly construed by the Judge, this evidence would have been capable of going at least some way to addressing her concerns in relation to the absence of supporting evidence for the period in question. It is unclear whether the appellant was questioned in oral evidence concerning his dealings with the Tamil Community Centre. We find that the letter, properly construed, together with other evidence in this appeal, including potentially the appellant's oral evidence, could have made a material difference to the outcome of the appellant's appeal. We find that the Judge's assessment of the letter amounts to a material error of law in combination with the additional matters addressed below.
19. In relation to ground 2, we are not persuaded that the information regarding the appellant's reporting history provided at the hearing could properly be construed as a formal "concession" by the respondent as asserted in the grounds. However, we do find that the Judge has failed to provide any reasons as to why she did not accept that the appellant had been resident in the UK since 2009 given that the respondent's representative at the hearing confirmed the appellant had been reporting to the respondent "on and off" since that time, after a gap in reporting between 2002 and 2009. In addition, it was confirmed that there had been

no suggestion that the appellant had been an absconder. It may be that the Judge did not accept this information on reporting was capable of taking the appellant's case further due to the reference to the reporting being "on and off". However, the appellant was entitled to know what the Judge made of this information in the context of his claim of long residence and in this respect there was a failure to provide reasons.

20. The period covered by the appellant's reporting record is not capable of addressing the full period from 2003 to 2013 but the fact that it may have been capable of addressing a four year period from 2009 to 2013 is not insignificant.
21. The Judge found the appellant's and his sister's evidence was not "wholly reliable". In light of the recorded discrepancies in the assessment of oral evidence this was a finding clearly open to the Judge. However, we note that the nature of the discrepancies in the appellant's evidence related to what relatives he had remaining in Sri Lanka and what the appellant's sister knew about the appellant living in Wales. These are not matters which directly relate to the length of the appellant's residence in the UK. One can speculate that any false evidence from the appellant about his remaining family in Sri Lanka was to support his contention that he would face very significant obstacles to his integration should he be returned there.
22. We find that the Judge was entitled to consider the oral evidence to not be wholly reliable to light of the noted discrepancies. However, it does not necessarily follow that the appellant's account of having been continuously resident in the United Kingdom since February 2000 should be disregarded. The appellant's evidence regarding his length of residence in the UK was capable of attracting some weight. It is not apparent from the decision what weight, if any, was attached to the appellant's account in this regard.
23. We find that there is some merit to grounds 3 and 4.
24. It is not apparent that the Judge directed herself in line with Lucas and Uddin. We have regard to equivalent guidance from Lord Glennie in TF (Iran) v Secretary of State for the Home Department [2018] CSIH 58 about assessing credibility where an appellant's account may contain lies, in particular at [48] :

"Any court or tribunal must be very careful not to dismiss an appeal just because an appellant has told lies. For reasons we have already set out, the judge should not jump too readily to the conclusion that because the appellant has told lies about some matters then his credibility on all matters is fatally undermined".

25. Whilst it might be reasonably concluded that the appellant had overstated his case in terms of his lack of remaining ties to Sri Lanka and was prepared to tell lies, it does not necessarily follow that he lied about his continuous residence in the UK. We are unable to conclude that if the Judge had directed herself in line with Lucas and Uddin she would have

reached an alternative conclusion in this appeal. However, taken together with the additional grounds, we find this omission by the Judge to be a material error.

26. Together with the Judge's concerns regarding the credibility of his account, the Judge noted an absence of supporting evidence such as evidence of employment or the appellant's GP records. It is not apparent whether the appellant's lack of evidence was put to him for comment. We consider that it is possible, for example, that the appellant did not feel able to approach people who had provided him with work over the years when he did not have leave to work here lawfully and/or those who had provided the appellant with work may not have been prepared to provide evidence in these circumstances. Given the significance attached to the lack of supporting documentation, we consider it would have been proper as a matter of procedural fairness to put these matters to the appellant at the hearing for comment.
27. Neither Ms Walker nor Mrs Nolan had access to any record of proceedings or notes from the representatives from the hearing and there is no indication from the decision that these matters were put to the appellant. We accept that where adverse inferences may be drawn from an absence of evidence which a decision maker considers would be reasonably available to an appellant, fairness would ordinarily require that such matters are put to the appellant for comment. There is no indication that this was done.
28. Taking stock of the matters we have considered in relation to grounds 1 to 4 we find that cumulatively they amount to material errors of law such that the decision should be set aside in its entirety.
29. In respect of her Article 8 assessment, we find that the Judge provided adequate reasons for determining the appellant did not enjoy family life with his sister and her son. However, in respect of the consideration of very significant obstacles to integration on return to Sri Lanka and unjustifiably harsh consequences, we find that the Judge's findings were reached through the lens of not accepting the appellant's claim of long residence. In light of our decision regarding errors made in respect of the Judge's assessment of the long residence issue we find the Judge's assessment of the appellant's Article 8 claim to be unsafe.
30. In relation to the ground 5, which concerns the observation by the Judge that it is general knowledge that the respondent does not always record departing travellers and that many people cross international borders without being processed, we do not consider it necessary to make any findings given our conclusions in relation to the other grounds. However, we record that we do not accept this was a matter for the respondent to evidence as asserted in the grounds. It appears from the decision that the Judge's observation arose from a submission on behalf of the appellant that there would be records if he had left and re-entered the UK. It was not a matter raised or relied upon by the respondent. We remind ourselves

that in respect of the appellant's claim of 20 years continuous residence the appellant bears the burden of proof.

31. In view of the additional evidence the appellant has indicated he wishes to adduce, including medical evidence, and potentially reasonably extensive fact-finding required, the appeal will be remitted to the First-tier Tribunal to be re-heard by a judge other than Judge Sullivan.
32. We preserve the Judge's findings that the appellant has been continuously resident from his arrival in the UK until the end of 2002, and from March 2023 to date. It is expected that the parties undertake to use their best endeavours to narrow any remaining issues on the basis of evidence available to them. To this end and in accordance with the Overriding Objective, the respondent should disclose to the appellant's representatives any records in her custody or control in relation to the appellant's reporting or other contact with the appellant since his arrival in the UK in 2000.

Notice of Decision

33. **The appellant's appeal is allowed. The decision of Judge Sullivan involved the making of an error of law and is set aside. The appeal is to be remitted to be heard by a Judge other than Judge Sullivan. We preserve the findings that the appellant has been continuously resident between his arrival in the UK in February 200 and the end 2002 and from March 2023 to date.**

Sarah Grey

Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 December 2024