



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/02491/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 9th March 2018

**Decision & Reasons
Promulgated
On 4th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE PROFESSOR SATVINDER JUSS

Between

**MR GURMIT SINGH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Sharma (Counsel)
For the Respondent: Mr S Walker (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-Tier Tribunal Judge Trevaskis promulgated on 2nd October 2017, following the hearing at Columbus House in Newport on 27th September 2017. In the determination, the judge allowed the appeal, whereupon the Respondent subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of India, who was born on 15th April 1972. He appealed against the decision of the Respondent dated 21st September

2016, refusing him leave to remain in the UK on the basis of his family and private life.

The Appellant's Claim

3. The basis of the Appellant's claim is that the decision of the Respondent is against the weight of the evidence, is not in accordance with the Rules, and is not compatible with the Appellant's rights under the ECHR. The Appellant had entered the UK on 26th August 1995, his asylum application was then in 1996 and on 29th September 2010, he applied for indefinite leave to remain on the basis of long residency. However, on 15th August 2011, he was sentenced to six months' imprisonment for possession of a false document. He was then released from prison on 29th October 2011 (see paragraph 3). The Respondent was not satisfied that the perpetrator accrued fourteen years' continuous residence, because it had been disrupted by his sentence of imprisonment, which his sentence was not spent until 29th July 2018.

The Judge's Findings

4. The judge had regard to the Appellant's submission that he could point to the decision of the Upper Tribunal promulgated on 18th August 2015, in which it was found that, at the date of his application for indefinite leave in 2010, he had completed fourteen years' continuous residence, because his prison sentence had become spent in January 2012, before the final refusal decision in 2014 (see paragraph 9). Accordingly, the Appellant submitted that he had satisfied all the requirements for grant of leave under paragraph 276B. The judge found that the Appellant had already passed the Knowledge of Life Test, and he had also passed the ESOL test (paragraph 14). It was also concluded that, at the date of the decision by the Respondent, the Appellant was not subject to an unspent conviction (paragraph 15). This was because the conviction was spent in January 2012 and that, "It is no longer reasonable to conclude that the fact of that conviction still rendered him incapable of satisfying the Rules for the grant of indefinite leave, when the decision was made in 2014" (paragraph 16).
5. The appeal was allowed.
6. The grounds of application state that Judge Trevaskis had misdirected himself because the application was refused under paragraph 322(1C) and this type of refusal is mandatory, a matter that was overlooked by Judge Travaskis, who has instead concentrated on when the conviction became spent. The grounds go on to state that a closer look at paragraph 322(1C) reveals that where a person is seeking indefinite leave to remain "they have been convicted of an offence for which they have been sentenced to imprisonment for less than twelve months, unless a period of seven years has passed since the end of the sentence" they could not succeed. This is because on 15th August 2011 at Inner London Crown Court the Appellant was sentenced to six months' imprisonment and was released on 29th October 2011. A period of seven years has not passed since the end of

this sentence. Therefore, the Appellant fell to be refused under general grounds by reference to paragraph 322(1C) and subparagraph (iii).

7. On 21st December 2017 permission to appeal was granted by the First-Tier Tribunal.

Submissions

8. At the hearing before me Mr Walker, appearing on behalf of the Respondent Secretary of State, submitted that he had first-hand knowledge of this appeal because he was involved as a Senior Presenting Officer in the earlier decision which went before Deputy Upper Tribunal Judge Davey, when he considered how long the Appellant had been in the UK; his criminal conviction of six months; whether that was extant; and under the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the relevant period that should have passed after the end of the sentence, was not seven years, but 24 months. This being so, Mr Walker submitted that the grounds of application, as drafted, simply “fall away”.
9. For his part, Mr Sharma submitted that the Legal Aid, Sentencing and Punishment of Offenders Act 2012, was already a document that was in the Appellant’s and the Respondent Secretary of State’s own bundle (at tab B, from B1 to B8) and he helpfully handed up a copy, extracting it from the Respondent’s Secretary of State’s bundle. He submitted that since Mr Walker had stated that the grounds of application now “fall away” there were two options before this Tribunal. The first was for the Upper Tribunal to determine the appeal now in Mr Singh’s favour, given that the grounds of application were not being relied upon. Second, was to consider whether Mr Walker was in a position to withdraw the appeal before the Upper Tribunal today.
10. Mr Walker replied to say that he was not in a position to withdraw the appeal.
11. Accordingly, I have determined the appeal on the basis, that since the grounds of application are no longer sustainable, then the decision of Judge Trevaskis below, that, “that the Appellant was not subject to an unspent conviction” (paragraph 15), such that the appeal failed to be allowed, means that the decision of the First-Tier Tribunal cannot have been in error.

Decision

12. There is no material error of law in Judge Trevaskis’ decision. The determination shall stand.
13. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

27th March 2018