Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/25090/2015

THE IMMIGRATION ACTS

Heard at Field House **Decision & Reasons Promulgated**

Heard on 11th of December 2017 **on 10th of January 2018**
Prepared on 2nd of January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

MR KULWANT SINGH
(Anonymity order not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Hashim of Counsel
For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of India born on 11th of April 1961. He appeals against a decision of Judge of the First-tier Tribunal Caroll sitting at Taylor House on 6th of March 2017 which dismissed the Appellant's appeal against a decision of the Respondent dated 23rd of June 2015. That decision was to refuse the Appellant's application for leave to remain

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under the long residency provisions and Article 8 of the Human Rights Convention.

2. The Appellant entered the United Kingdom illegally in August 1993. In the same month he made an asylum application which was refused by the Respondent in September 1996. The Appellant appealed against that refusal but his appeal was dismissed by the Tribunal in July 1998. The Appellant remained in the United Kingdom on temporary admission but absconded. On 20th of January 2009 he submitted an application for leave to remain on the grounds of long residency which was refused in October 2009 with no right of appeal. The Appellant remained in the United Kingdom thereafter and on 3rd of December 2014 applied again for leave to remain on the basis of his private life and long residency. It was the refusal of that application which gave rise to the present proceedings.

The Respondent's Decision

3. The Respondent accepted that the Appellant satisfied sub paragraphs (i) and (ii) of paragraph 276ADE (1) of the Immigration Rules that is that the Appellant did not fall for refusal under the suitability requirements and had made a valid application for leave to remain on the grounds of private life. However, the Appellant had not submitted sufficient documentary evidence to prove that he had lived in the United Kingdom for 21 years and 3 months because there was a gap in the documentation between 2002 and 2008. The Appellant could not show continuous residence in United Kingdom for at least 20 years. Nor could he show that he had lived continuously in the United Kingdom for less than 20 years but there would be very significant obstacles to his integration into India. The Appellant had spent over 32 years in India before arriving in the United Kingdom. He would not have lost all ties to his home country nor would he be unfamiliar with the language and culture of India if he were to be returned there.

The Decision at First Instance

4. At [18] of the determination the Judge noted that the Appellant had had no contact with the Respondent between 1998 and 2009. There was a dearth of credible documentary or oral evidence to support the Appellant's claimed continuous residence since 1993. There were for example no tenancy agreements, employment documents or evidence of funds. The Appellant could not show that he had lived continuously in United Kingdom for at least 20 years nor could he demonstrate very significant obstacles to his integration into India is required to leave the United Kingdom. The Appellant did not have a partner or children in the United Kingdom and there was no evidence from any of the family members the Appellant claimed to have in this country. The evidence as to the Appellant's private life was the Judge found at [20] scant to say the least. There were no exceptional circumstances and the appeal was dismissed.

The Onward Appeal

5. The Appellant appealed against this decision arguing that the Judge had failed to make adequate findings in respect of the Appellant's oral evidence on the issue of continuous lawful evidence. Crucially the Judge had overlooked an important letter from the Respondent to the Appellant dated 12th of October 2009 which confirmed that the Appellant had "remained in the United Kingdom unlawfully since his Tribunal concluded on 21st of July 1998 and upheld the decision to refuse his asylum application". Further the Respondent had written to the Appellant's member of Parliament on 5th of March 2013 with a chronology of the Appellant's immigration history. This had stated next to the entry dated 21st of July 1998 that the Appellant's appeal against refusal of asylum had been dismissed and "he remained here unlawfully since".

6. The Judge had erred in failing to determine how likely it would have been for the Appellant in the United Kingdom unlawfully, to have left and return to the United Kingdom during the period between 1993 and 2002. The Judge also erred at [12] of the determination in rejecting the evidence of a witness who had not attended. The Judge had rejected at [17] a letter from the Appellant's general practitioner confirming the Appellant had been registered with the practice since 1993 because the letter gave no further information as the dates of appointments attended by the Appellant. That letter had not been properly considered although it established continuous residence. The Judge had given inadequate reasons for rejecting the claim under Article 8.

7. The application for permission to appeal came on the papers before Judge of the First-tier Tribunal Page on 12th of October 2017. In granting permission to appeal he noted the argument that the Judge had overlooked the 2009 letter. Permission was granted on all grounds.

8. The Respondent replied to the grant on 8th of November 2017 stating that the Judge had given adequate and rational reasons for the conclusions reached as to the credibility of the Appellant's claims. The weight to be attached to witness evidence was a matter for the Judge and conclusions on weight should not be interfered with in the absence of a material mistake of fact or perversity. The alleged concession in the October 2009 letter from the Respondent had been withdrawn by the refusal letter under appeal dated 23rd of June 2015.

The Hearing Before Me

9. In oral submissions counsel relied on the points made in the grounds namely that the Judge appeared to have overlooked the letter from the Respondent in 2009 confirming that the Appellant had remained in United Kingdom unlawfully and had overlooked the letter to the Member

of Parliament. If the Judge had looked at that correspondence the result of the case would have been different. The patient records of the Appellant's GP Dr Gill were exhibited to the Appellant's bundle. These showed entries for example in 2001 that the Appellant had attended the GP surgery on 21st of September 2001 complaining of neck ache. The Appellant must therefore have been in the United Kingdom at that time.

10. In reply, the Presenting Officer stated that the Respondent may have accepted that the Appellant had been in the United Kingdom for a period of time but had changed her position in her letter dated 2015. The Judge was not required to accept the Respondent's earlier concession because it was withdrawn. The Appellant's response to this submission was that it was unfair and unjust if the Respondent's withdrawal in 2015 was allowed to stand. The Judge should have looked at the earlier correspondence.

Findings

11. The Appellant's arrival in the United Kingdom was accepted by the Respondent in the refusal letter under appeal as being an illegal entry on 16th of August 1993. The Appellant's application was dated 3rd of December 2014 and thus provided the Appellant could show continuous residence for that period he would satisfy the 20-year requirement. The medical evidence he produced to the Judge only showed that he had been registered with his GP since 1993. Further evidence now produced in the form of his patient record showed that while he did not attend the GP surgery between December 1993 and June 2000 he did attend accident and emergency on at least 4 occasions during that time.

12. The Respondent wrote two letters stating that the Appellant had remained unlawfully in the United Kingdom following the dismissal of his asylum appeal in 1998. The 1st letter was written by the Respondent to the Appellant's solicitors on 12th of October 2009 and the 2nd was written by the Respondent to the Appellant's Member of Parliament on 5th of March 2013. The Respondent could not be expected to prove a negative. The two letters in question indicate that there was no information before the Respondent that the Appellant had left the country between 1998 and the submission of his 2009 application. This was a period of 11 years during which it now appears he attended his GP surgery and a hospital.

13. The Judge was not persuaded by supporting evidence called on the Appellant's behalf at the hearing. The weight to be placed on statements made by people who did not attend to be cross examined on those statements was a matter for the Judge who was entitled to reject that evidence for the reasons she gave. What the Judge had before her were two letters from the Home Office seeming to indicate that it was not disputed that the Appellant had remained in the United Kingdom unlawfully. That is not quite the same as saying that the Respondent accepted that the Appellant had remained unlawfully notwithstanding the

clear wording of the letters. Nevertheless, they represent a concession made on two separate occasions by the Respondent that the continuous residence in the United Kingdom of the Appellant was not challenged.

14. The Respondent's case is that she wishes to withdraw those concessions and put the Appellant to proof of his stay in this country. The Appellant argues that the withdrawal of the concessions freely made by the Respondent at an earlier stage is unfair. If there was no supporting evidence produced by the Appellant to show his residence in this country during the "missing years" I would not have any objections to the Respondent's withdrawal of the concession since the position would be that the Appellant did not have any evidence of his own but was relying on the supposition of the Respondent that the Appellant had been in this country. Taken with the unreliability of the Appellant's witnesses that would not in my view make it unjust for the Respondent to withdraw the concession and put the Appellant proof.

15. The Judge's objection to the medical evidence was that a letter from the GP had given no further information as to dates of appointments. It does not appear that the patient records were before the Judge since they appear for the first time in the Appellant's bundle produced for the hearing before me along with a letter from the GP dated 29th of November 2017. All that the Judge appears to have had at first instance was a letter from the GP Dr Gill dated 27th of February 2008 confirming that the Appellant had been a patient of the practice since 1993. That did not of itself take the case significantly further. It was not an error for the Judge to fail to deal with evidence not put before her.

16. The only basis on which the patient records produced to me but not before Judge Caroll can be admitted (in relation to the issue of error of law) is under the principles in the well-known case of **Ladd v Marshall**. The evidence must satisfy a twofold test. Firstly, are the records relevant to the issues in the case and secondly was it not reasonable to have obtained this evidence before the hearing? The patient records are undoubtedly relevant to the case since they deal with the missing years and indicate that the Appellant was in the United Kingdom during that time.

17. Could they not have been obtained before the hearing? The difficulty here was that the Appellant was no longer represented by his previous representatives by the time of the hearing before Judge Caroll. Those representatives came off the record on 2nd of February 2017 just over a month before the hearing at Taylor House. That put an unrepresented Appellant in obvious difficulties for example in knowing what evidence he needed to produce and what enquiries had been made thus far.

18. On that basis, I am prepared to admit the patient records which show that the Appellant was in this country at all material times and that therefore it would not be right for the Respondent to withdraw the statements made

by her on 2 previous occasions that the Appellant was living unlawfully in this country. The Appellant has not been served previously with removal directions and the clock has not stopped. I am satisfied on the basis of the evidence that there was a material error of law in disregarding the letters from the Respondent which confirmed that the Appellant had been in the United Kingdom for the relevant periods. The Respondent could not in all fairness withdraw her concession. As such I set the decision at first instance aside and proceed to remake the decision. There is no need to take further evidence or remit the case back to the First-tier as matters are clear. I am satisfied that the documentary evidence that is to say the patient records taken with the two letters from the Respondent are sufficient to show that the Appellant has been in this country for at least 20 years continuously. I therefore remake the decision this case by allowing the Appellant's appeal.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and I have set it aside. I remake the decision by allowing the Appellant's appeal

Appellant's appeal allowed

I make no anonymity order as there is no public policy reason for so doing.

Signed this 2nd of January 2018

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Judge Woodcraft
Deputy Upper Tribunal Judge

TO THE RESPONDENT
FEE AWARD

Although I have overturned the decision at first instance, I do not disturb the decision not to make a fee award since I have allowed the appeal on the basis of evidence produced after the hearing.

Signed this 2nd of January 2018

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Judge Woodcraft
Deputy Upper Tribunal Judge