**Upper Tribunal**
**(Immigration and Asylum Chamber)**

Appeal Number: HU/06161/2019
HU/06155/2019

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 11 March 2020** | **On 01 June 2020** |

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**LABH SINGH**
**SALOCHANA DAVI**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the appellant: Mr K. Manzur e Mawla of Morgan Hall Solicitors
For the respondent: Ms J. Isherwood, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant's appealed the respondent's decision date 20 March 2019 to refuse a human rights claim.

2. First-tier Tribunal Judge C.A.S. O'Garro ("the judge") dismissed the appeal in a decision promulgated on 19 July 2019. The appellants claimed to have entered the United Kingdom in April 1996. The most recent human rights application was made

on 07 November 2018. The respondent accepted that the appellants had been continuously resident in the UK since 2000 but the decision letter did not provide a specific date. The judge accepted this concession [16].

3. The key area of dispute was whether there was sufficient evidence to show that the appellants had been residing in the United Kingdom since either November 1998 (to meet the requirements of paragraph 276ADE(1)(iii) of the immigration rules at the date of the application) or March 1999 (to meet the requirements by the date of the hearing).

4. The judge considered the two key pieces of evidence relied upon by the appellants to cover that period. The first was a tenancy agreement dated 19 June 1998 for a property at Natal Road. The second was a tenancy agreement dated 12 February 1999 for a property at Jersey Road. She rejected the first tenancy agreement for the following reasons [18-19]:

   (i) There was no other evidence to show that they had ever lived at an address in Natal Road;

   (ii) The tenancy agreement stated that the tenants were responsible for paying the bills for services to the property, but there was no evidence to show that they had paid bills;

   (iii) The second appellant's claim in evidence that gas and electricity was included in the rent was inconsistent with the wording of the tenancy agreement;

   (iv) The second appellant's explanation about the overlap between the tenancy agreement for Natal Road and a tenancy agreement for a property at Jersey Road was not credible.

5. The judge went on to consider the second tenancy agreement for a property at Jersey Road and gave the following reasons for placing little weight on the document [20]:

> "20. At the hearing the appellants produced another tenancy agreement dated 12 February 1999 for occupancy of [Jersey Road], Ilford Essex. In cross-examination it was pointed out to the second appellant that she had given evidence earlier that she had lived at [Natal Road] for a year. Further, when I considered the tenancy agreement for [Natal Road], the terms of the tenancy says "a term certain for one year…" The second appellant said that they were looking for another property to move to, which is the reason the two tenancies overlapped. I do not find this explanation credible. It makes no sense that the appellants would pay for two tenancies at the same time. Further, I noted on the tenancy agreement for [Jersey Road], an incomplete date – 11-02-20- hand written on the right hand corner of the document which causes me to question what is the commencement date of that tenancy agreement. Indeed if the appellant did move to [Jersey Road] on 12 February 1999, no explanation has been given why there are no utility bills for this property prior to 2000. I accept that the appellants are living at [Jersey Road], but I am not satisfied that the appellants move to that address prior to 2000."

6. The judge went on to consider evidence from the President of Shri Guru Ravidas Mission and another person who both said that they had known the appellants for 20 years, but she gave little weight to the evidence because they were friends and did not attend to give evidence.

7. The appellant appeals the First-tier Tribunal decision on the following grounds:

   (i) The judge erred in her approach to the tenancy agreements and the letter from the temple.

   (ii) The judge erred in her approach to the assessment of integration for the purpose of paragraph 276ADE(1)(vi) of the immigration rules.

**Decision and reasons**

**Error of law**

8. I find that there is no merit to the first ground of appeal relating to the judge's approach to the evidence from the Shri Guru Ravidas Mission in London. The first ground asserts that the letter was an "official reference from a religious authority" and was not a letter from a friend. However, I note that there were two letters from the Shri Guru Ravidas Mission before the First-tier Tribunal. The first was dated 12 July 2018 in which the President of the mission said that the appellants were "family friends and also visit Shri Guru Ravidas Mission Temple often of which I am the president". The second was a letter dated 04 June 2019 in which the President of the mission confirmed their attendance at the temple for over 20 years but did not mention the fact that he was a friend. In light of the first letter, it was open to the judge to reduce the weight to be given to the evidence on the ground that Mr Luggah did not attend to give evidence, and as a friend, might have had a motive to assist them.

9. The second point is more persuasive. The judge accepted that, at the date of the hearing, the appellants continued to live at the address in Jersey Road. Indeed, the appellants' bundle ran to 296 pages of evidence showing that they had lived at the same address in Jersey Road since at least 2000. The earliest correspondence to the second appellant at that address was from Newham Primary Care Trust on 18 September 2000. It is reasonable to infer that the respondent accepted that the appellants had been resident in the United Kingdom since 2000 because of the weight of this evidence.

10. The only piece of evidence pre-dating September 2000 was the tenancy agreement for Jersey Road. I conclude that the judge erred in her assessment of this evidence for the following reasons.

11. The judge failed to put to the appellants her concern about the incomplete date on the tenancy agreement. The copy of the tenancy agreement in the appellant's bundle did show an incomplete date, but on considering that evidence, it seemed to me that it was likely that the date was cut off by the way in which the document was photocopied because the postcode above the date was cut off at the same point. A brief request to the appellant's representative before the start of the hearing in the Upper Tribunal produced a further copy of the document, which showed that this was the case. The full date on the tenancy agreement showed that the initial tenancy was for a period of one year from "12-02-1999" to "11-02-2000". If the judge had

concerns about the document, she should have raised the issue. Her approach was procedurally unfair.

12. The judge rejected both tenancy agreements on the ground that the second appellant's evidence relating to the apparent overlap in the tenancies was not credible. However, having rejected the evidence relating to the tenancy at Natal Road for sustainable reasons, it did not necessarily follow that the second tenancy agreement could be rejected for the same reason.

13. The judge failed to consider the weight of the evidence, which showed that the appellants were long standing residents of the address in Jersey Road. While there was doubt as to whether the appellants had lived at Natal Road, it was accepted that the appellants had lived at the same address in Jersey Road since at least 2000. The judge failed to consider whether it was more likely than not that they had some form of tenancy agreement for the property. The face of the tenancy agreement stated that the tenancy began on 12 February 1999. The front of the tenancy agreement said that the letting agents were "Gorden & Ajeet Property" in Green Street E7. A letter from Gorden & Ajeet Property Management dated 11 March 2001 was included in the evidence contained in the appellant's bundle. The letter itemised works that the landlord was intending to complete and was broadly consistent with the tenancy agreement.

14. When properly analysed in the context of the evidence taken as a whole, the judge's concerns about the apparent overlap in tenancies went far more to the credibility of the tenancy agreement relating to Natal Road. Had the judge considered relevant evidence relating to their long-standing residence at the property in Jersey Road, weight could and should have been accorded to the second tenancy agreement.

15. Although I note that the tenancy agreement for Jersey Road ran for an initial period from 12 February 1999 to 11 February 2000, and there is no copy of a subsequent agreement, I find that it is reasonable to take judicial notice of the fact that an assured shorthold tenancy can continue by operation of statute as a periodic tenancy without the need to sign a fresh agreement. I note that most of the utility bills contained in the appellants' bundle are more recent. I would not expect the appellants to keep copies of utility bills from as long ago as 1999. The evidence relating to their early years of residence in Jersey Road largely comprises of correspondence from the hospital and the property management company. For these reasons I find that the lack of evidence relating to the payment of bills in their early years of residence at the property is not something that causes much concern.

16. For the reasons given above, I conclude that the judge gave sustainable reasons for rejecting the evidence relating to the appellants' claimed residence at Natal Road but failed to consider relevant evidence when assessing their residence at Jersey Road from February 1999 onwards. That part of the decision is set aside.

17. The second point relating to paragraph 276ADE(1)(vi) was not pursued with any vigour at the hearing and is unarguable. Although the appellants have lived in the

UK for many years, they were born in India and have spent most of their lives there. The judge's finding that there would not be 'very significant obstacles' to integration was within a range of reasonable responses to the evidence.

**Remaking**

18. I bear in mind that the appellants do not need to prove their case with any certainty. For the reasons given above I find that the evidence shows on the balance of probabilities that the appellants have been resident in the United Kingdom since at least February 1999.

19. At the date of the human rights application in November 2018 the appellants had not been resident for a period of 20 years and did not meet the requirements of paragraph 276ADE(1)(iii) of the immigration rules. However, at the date the Upper Tribunal is remaking the decision the evidence shows that it is more likely than not that the appellants have been resident in the UK for a continuous period of 20 years.

20. It is likely that the appellants have established a private life in the United Kingdom during this long period of residence. Their removal is likely to interfere with that private life in a sufficiently grave way as to engage the operation of Article 8(1) of the European Convention on Human Rights.

21. Article 8 of the European Convention protects the right to private and family life. However, it is not an absolute right and can be interfered with by the state in certain circumstances. It is trite law that the state has a right to control immigration and that rules governing the entry and residence of people into the country are "in accordance with the law" for the purpose of Article 8. Any interference with the right to private or family life must be for a legitimate reason and should be reasonable and proportionate.

22. Part 5A NIAA 2002 applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts breaches a person's right to respect for private and family life under Article 8(2) of the European Convention. It is in the public interest to maintain an effective system of immigration control. The immigration rules reflect where the respondent considers a fair balance is struck for the purpose of Article 8(2). Paragraph 276ADE(1)(iii) recognises that, even in cases where a person has remained without leave, it would be disproportionate to remove them if they have lived in the United Kingdom for a continuous period of 20 years. The respondent was satisfied that there were no other public interest considerations which precluded the appellants from meeting the 'Suitability' requirements of the immigration rules. None are apparent on the evidence. I conclude that removal in consequence of the decision would amount to a disproportionate interference with the appellants' right to private life under Article 8 of the European Convention.

23. I conclude that the First-tier Tribunal decision involved the making of an error on a point of law. The decision is remade. The respondent's decision is unlawful under section 6 of the Human Rights Act 1998.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The appeal is ALLOWED on human rights grounds

Signed *M. Canavan* Date: 28 May 2020
Upper Tribunal Judge Canavan

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**NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

**5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**

**6. The date when the decision is "sent' is that appearing on the covering letter or covering email**