Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/28343/2012

THE IMMIGRATION ACTS

Heard at : Field House	**Determination Promulgated**
On : 20 June 2013	**On : 24 June 2013**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

NOVAID MOHAMMED

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Nasim, instructed by M-R Solicitors
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan born on 20 October 1971. He claims to have arrived in the United Kingdom unlawfully on 10 December 1997. There is no evidence of his entry.

2. On 23 May 2012 he applied for indefinite leave to remain in the United Kingdom on the basis of long residence and submitted various documents with

his application as evidence of studies, employment and residence in the United Kingdom since December 1997. His application was refused on 22 November 2012 under paragraphs 276B(i)(a) and (i)(b) of HC 395. With regard to paragraph 276B(i)(b), the respondent considered that he had failed to submit sufficient evidence of his residency throughout the period from December 1997. The respondent did not accept any of the evidence submitted in relation to residency prior to 2007 and only accepted those documents for 2007 onwards as being genuine and sufficient to show residency. It was therefore not accepted that he had accrued 14 years or more continuous residence in the United Kingdom. The respondent also considered Article 8 under the immigration rules but did not accept that the appellant was able to meet the requirements of those rules. A decision was then made, the same day, to remove him to Pakistan.

3. The appellant appealed against that decision and his appeal was heard by First-tier Tribunal Judge Davey on 4 February 2013. Judge Davey heard from the appellant and two witnesses. He found the documentary evidence produced by the appellant to be largely reliable. He placed little weight on the evidence of the witnesses as to the appellant's arrival and early residence in the United Kingdom, although he gave some weight to the evidence of a third witness who had not attended, since it was consistent with other evidence. The judge found, on balance, that the appellant had discharged the burden of proof to show that he had been in the United Kingdom since the end of 1997. He found nothing in relation to the considerations identified in paragraph 276B(ii) to indicate that entry clearance should be refused. However, he found that the appellant had failed to meet the English language requirement of the rules since there was no evidence before him to show that he had sufficient knowledge of the English language or sufficient knowledge about the life in the United Kingdom. He found that the appellant was accordingly unable to meet the requirements of the immigration rules and he found also that his removal would not breach Article 8, either under the new rules or in the wider context. He dismissed the appeal.

4. Permission to appeal to the Upper Tribunal was sought on the grounds that the judge, having accepted that the appellant had shown that he had been resident in the United Kingdom since 1997, ought to have allowed the appeal; and that the judge had not decided Article 8 properly.

5. Permission was granted on 2 May 2013, although on a different basis, namely that the judge had arguably raised the issue of English language of his own accord, without giving the appellant an opportunity to respond to the matter and had arguably deprived him of a fair hearing.

Appeal hearing

6. The appeal came before me on 20 June 2013.

7. Mr Tarlow and Mr Nasim were in agreement that there had been an error of law in the judge's failure to give the appellant an opportunity to respond to an

issue that he had raised of his own accord and which had not been raised in the refusal letter, namely as to the English language requirements. They both agreed that the decision ought therefore to be set aside and re-made. However they had different views as to which of the judge's findings were to be preserved.

8. Mr Tarlow relied upon the Secretary of State's Rule 24 response, in which it was asserted that the judge had failed to have regard to submissions made by the presenting officer on the matter of the appellant's employment records and the reliability of the documentary evidence. In his view none of the findings should be preserved and the appeal should be heard afresh.

9. Mr Nasim submitted that the judge had looked at all matters properly and that the rule 24 did not challenge his findings. There had been no challenge to the authenticity of the documents. The appellant had submitted evidence of his English language ability, and that was referred to in the covering letter from his solicitors at page C1 and in his application form at B43. The judge's findings should be preserved and the decision re-made with regard only to the English language requirement.

10. I advised the parties that in my view the First-tier Tribunal Judge had made errors of law in his determination and that his decision had to be set aside with none of the findings preserved. My reasons for so concluding are as follows.

Consideration and findings

11. It was not in dispute that the judge had erred in law by making adverse findings in regard to the English language requirement of the rules without having given the appellant an opportunity to address that matter. I therefore set aside the determination on that basis.

12. However it seems to me that the judge's findings on the documentary evidence and the appellant's length of residence in the United Kingdom also contain errors of law and have to be re-made as well.

13. Whilst the respondent, in refusing the appellant's application, did not refer to any specific anomalies or irregularities in the documents produced by the appellant as undermining their authenticity, the documents relating to residence prior to 2007 were nevertheless not accepted as carrying any weight, on the basis that they were not official documents and that they related to companies which had never been registered. Additional reasons for not giving weight to the documentary and other evidence were given by the presenting officer in submissions before the judge at the hearing. Those reasons included the fact that there was no explanation how the appellant had managed to work and study throughout his period of residence without being asked to provide any identification (as was the appellant's evidence); that the only witness who was able to attest to the appellant's residence in the United Kingdom prior to 2007 had not attended the hearing; that it appeared coincidental that all the companies that had provided the evidence pre-dating 2007 had been dissolved or were not registered; and that the documents were ones that could easily have been created by anyone.

14. However, there is no indication in Judge Davey's determination that he took those submissions into account when making his findings about the evidence. It appears that he simply accepted the reliability of the documents on the basis that evidence had been supplied to show that the relevant companies had been registered at the time the appellant was involved with them. He did not give any consideration to, or make findings upon, the credibility of the appellant's account of having managed to study at and work for such organisations and companies without providing any evidence of identification, nor to the fact that each of the companies had subsequently been dissolved, despite these being raised as issues before him and despite himself expressing reservations about the reliability of some of the evidence, as stated at paragraph 13, and placing little weight upon the evidence of the witnesses owing to their lack of personal knowledge of the appellant's entry and earlier residence in the United Kingdom. It seems to me, therefore, that the judge failed to take account of material matters that were raised before him and failed to give full and proper reasons for his findings in regard to the documentary evidence and thus to the appellant's length of residence in the United Kingdom. Accordingly, I do not consider that his findings in that respect can be preserved.

15. For all of these reasons, I find that the decision of the First-tier Tribunal contains errors of law and has to be set aside in its entirety. In the circumstances, it is appropriate for the appeal to be remitted to the First-tier Tribunal for all matters to be determined afresh.

DECISION

16. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside in its entirety, with no findings preserved. The appeal is remitted to the First-tier Tribunal, to be dealt with afresh, pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Davey.

Directions

Any further documentary evidence relied upon by either party is to be filed with the Tribunal and served upon the other party no later than ten working days before the hearing.

Signed

Date

Upper Tribunal Judge Kebede