



IAC-AH-DP-V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/17797/2019**

THE IMMIGRATION ACTS

At a Remote Hearing via Skype

**Decision & Reasons
Promulgated**

Heard on 10 March 2021

On 18 March 2021

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

BAHADUR SINGH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Raza, Counsel

For the respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant has appealed against a decision of First-tier Tribunal ('FTT') Judge O'Hagan, sent on 16 January 2020, dismissing his appeal on Article 8, ECHR grounds.

Background

2. The appellant is a citizen of India who claims that he arrived in the United Kingdom in 1998 and has resided here unlawfully on a

continuous basis since that time. The respondent did not accept this contention and refused his human rights claim that he was entitled to leave to remain in the light of his claimed lengthy residence, in a decision dated 17 October 2019. The FTT did not accept that the appellant discharged the burden of proving his length of residence and in particular did not accept his evidence or the evidence of his four witnesses to be reliable.

Appeal to the Upper Tribunal

3. The appellant appealed against that decision in written grounds of appeal prepared by Mr Uddin of Counsel. In a decision dated 8 April 2020 Judge Bird granted permission to appeal. He observed that the FTT arguably made contradictory and inconsistent findings and held the appellant's illegal entry and the witnesses' conduct against him, rather than focussing upon the evidence in support of the claimed lengthy residence.
4. At the hearing before me Mr Raza acknowledged that it was regrettable that although the grounds of appeal were prepared by Counsel, they were not enumerated. He agreed with me that the pleaded grounds of appeal could be summarised as follows:
 - (1) The FTT made contradictory findings regarding the witnesses' credibility and the available paper trail.
 - (2) The FTT overly focussed upon the adverse inferences to be drawn about the credibility of the witnesses and failed to weigh all the evidence in the round.
 - (3) The FTT provided inadequate reasons for the conclusion that the appellant's removal would not breach Article 8, ECHR.
5. Mr Raza's oral submissions focussed entirely upon ground 2. He submitted that the single fundamental issue of concern was that the FTT was not entitled to dismiss the evidence of the witnesses on the basis that it did in the particular context of this appeal, wherein it was entirely accepted that the appellant's residence in the UK had been entirely unlawful. Mr Raza reminded me of ZH (Bangladesh) v SSHD [2009] EWCA Civ 8, which considered the previous long residence rule that required 14 years continuous residence. Mr Raza did not take me the judgment in ZH (or any other authority) but I note that at the time that it was decided, rule 276B was in two parts: first, lengthy residence had to be established and second, there had to be no reasons why it would be undesirable for the person to be given indefinite leave to remain on the ground of long residence. The rule as currently drafted simply requires 20 years lengthy residence subject to the general and suitability provisions of the Rules (which do not apply here). In ZH Sedley LJ (with whom Keene and Smith LJJ agreed) observed at [3] that rule 276B was "in effect an amnesty clause". At [13] he urged caution against rendering the "amnesty

pointless by demanding of an illegal immigrant a degree of civic virtue incompatible” with the rule itself. In other words evasion of immigration control and other related countervailing factors should not be used as a reason to deny leave to a person who had amassed 14 years unlawful residence. As Sedley LJ said at [20]:

“In every such case the relevant nature of the appellant's stay is that it was unlawful, and its extent is by definition 14 years or more. Since these are treated by the rule as neutral gateway factors, they cannot be double-counted by then placing them in the public interest debit column. The public interest in an unlawful stay which has lasted 14 years or more is treated by the rule as met by a grant of indefinite leave to remain provided there are no countervailing factors which tilt the public interest balance the other way.”

6. Mr Bates relied upon written submissions on behalf of the respondent dated 5 August 2020. He submitted that the FTT was entitled to regard the witnesses’ evidence to be unreliable for the reasons provided. After hearing from both representatives I reserved my decision, which I now provide with reasons.

Discussion

7. I am satisfied that it is clear from reading the decision as a whole that as stated at [4] and [20], the FTT gave careful and anxious consideration to all the available evidence. That evidence included the written evidence in the bundles and the oral evidence of four witness, Mr Thani, Mr Balwant Singh, Mr Manjit Singh and Mr Harneek Singh. At [9], [13] and [14] respectively, the FTT noted that the appellant, Mr Thani and Mr Balwant Singh confirmed their respective witness statements. These statements each make the clear and consistent claim that the appellant was living in Tipton with Mr Balwant Singh (his elder brother) and his family members (including Mr Thani – Mr Balwant Singh’s son and the appellant’s nephew) since 1998. The FTT noted at [17] and [18] respectively that Mr Manjit Singh and Mr Harneek Singh confirmed the truth of very short letters and were asked additional questions.
8. After considering the legal framework the FTT accepted that the appellant was in the UK since at least 2010 because that is when he sought to regularise his immigration status with the respondent. The FTT then considered each item of significant evidence relevant to the appellant’s case that he was continuously resident in the UK from 1998 from [31] to [42]. This included: NHS cards issued in 2002 and 2009; sparse documentary and photographic evidence; supporting letters and affidavits and; the evidence provided by the appellant and the four witnesses who gave oral evidence.
9. The FTT carefully considered the evidence individually and holistically and came to findings open to it. It is regrettable that the FTT referred to the appellant as “she” at [48] but it is clear from reading the

decision as a whole that this was a typographical error. I prefer the careful written submissions prepared on behalf of the SSHD to the vague submissions made in the grounds of appeal. For completeness I deal with each ground of appeal, albeit Mr Raza only relied upon ground 2.

Ground 1 - The FTT made contradictory findings

10. Contrary to the appellant's grounds of appeal, the FTT did not make contradictory findings regarding the witnesses. At [38] the FTT acknowledged that their evidence was "on the face of it...clear and consistent" and specifically, Mr Manjit Singh's admission that he did not bother that much regarding immigration rules "had the virtue of being honest". The FTT was nevertheless entitled to regard their evidence as unreliable for the reasons set out at [38] and [39], for the reasons I set out below when addressing ground 2. In short, the witnesses showed no concern whatsoever regarding the appellant's illegal residence in the UK and were prepared to say what was necessary to achieve the objective of the appellant remaining.
11. I entirely accept that ZH provides a salutary warning that those who remain unlawfully for a lengthy period inevitably have inherent difficulties in seeking to establish that there were indeed resident, when they probably spent much of their time seeking to avoid any type of formality that might lead to their detection. As Beatson LJ observed at [61] of Khan, R (on the application of) v SSHD [2016] EWCA Civ 416:

"... as recognised, for example in ZH (Bangladesh) v Secretary of State for the Home Department [2009] EWCA Civ 8 at [3], the 14-year rule set out in Rule 276B(i)(b) is specifically directed to people who have managed to stay in the United Kingdom for 14 years or more without lawful authority, and is in effect an amnesty clause. It is likely that those in the United Kingdom without leave, and therefore without status, will have no official documentation, particularly in the early period of their residence."
12. The FTT was clearly conscious of all of this and acknowledged the conundrum faced by a person seeking to establish his unlawful residence, before concluding that it was not a particularly material consideration for this appellant. At [34] the FTT took into account the likely limitations involved in having a paper trail of residence when that residence was illegal but explained why in this particular case that was not a significant hurdle - the appellant seemed willing and able to obtain NHS and electoral papers. However, as the FTT observed at [31] the papers the appellant relied upon were limited in placing the appellant in the UK at the highest from the end of 2002. Furthermore, the FTT was entitled to correctly observe at [41] that the appellant registered for an NHS card and to vote when he was not entitled to do so. This does not contradict an expectation that there might be some form of a paper trail in relation to matters that did not

necessarily require lawful residence to obtain such as mobile phones, invitations, letters, emails, bills etc.

13. The FTT was entitled to attach limited weight to the letters and affidavit that supported the appellant's case on the basis that their authors did not attend the hearing. In any event, the FTT expressly considered this evidence in the round – see [37].

Ground 2 – approach to the evidence of the witnesses

14. The submission at [6] of the grounds is difficult to follow. Contrary to the assertion therein, the FTT did not find the witnesses to be honest. The grounds suggest that the appellant should have been given credit for honestly admitting to working without paying taxes. This is difficult to follow – it is unclear how the appellant could plausibly maintain that he was not working since 1998, when he accepted that he entered the UK as an economic migrant without any financial support from others, apart from his brother who worked as a market trader.
15. I now turn to the issue relied upon by Mr Raza, which he submitted was encapsulated in the observations of Judge Bird when granting permission to appeal – the FTT ignored the substance of the witnesses' evidence, in particular the evidence from the appellant's brother and nephew that he resided with them from 1998, for reasons that were not open to it. I have already indicated that the FTT paid careful regard to all the evidence relied upon by the appellant. That included a paucity of photographs to demonstrate the claims of the family. The FTT acknowledged that the evidence of the witnesses was clear and consistent. In other words, the FTT fully understood and took account of the clear and consistent evidence that the appellant had been residing with his brother's family in Tipton from 1998 – that evidence was contained in the three witness statements the FTT expressly took account of.
16. The real issue is whether the FTT was entitled to reject that evidence for the reasons it provided. As Mr Bates observed, the FTT was prepared to accept the documentary evidence placed the appellant in the UK from the end of 2002. The only evidence of note that placed the appellant in the UK between 1998 and 2002 came from the appellant and the four witnesses, and the sparse (not date-stamped) photographs they sought to date. The FTT regarded the witnesses' evidence as unreliable because on their own account they were aware of the appellant's illegal entry and longstanding unlawful residence but they were all unconcerned about this. The FTT assessed the position adopted by the witnesses at [39] as “based on the belief that the appellant's decision to ignore the law was a legitimate choice that should be respected” and then said this:

“In those circumstances, I was not satisfied that these were men on whose word I could place any particular reliance. Rather, I was left with the view that they would readily say whatever they considered was necessary to achieve their desired objective of enabling the appellant to remain without concern as to whether it was true or not, I have attached little weight to their evidence.”

17. This demonstrates that the FTT attached little weight to the witnesses' clear and consistent evidence that the appellant lived in the UK from 1998, not because of the appellant's own actions in remaining in breach of the immigration laws but because the witnesses demonstrated a sustained and worrying nonchalance regarding the importance of complying with the law. The FTT was entitled to be concerned by these attitudes and to regard the witnesses as unreliable. In so doing the FTT was clearly aware of the relevant context i.e. the appellant was relying upon unlawful long residence. Mr Raza submitted that the FTT completely ignored the crux of the witnesses' evidence. I do not agree. The FTT was well aware of the core aspects of the witnesses' clear and consistent evidence but was entitled to regard the evidence as unreliable for the reasons provided. This must be considered in context. The crux of the witnesses' evidence was predicated upon the bald assertion that the appellant lived in the UK continuously since 1998. There was no meaningful attempt by Mr Manjit Singh and Mr Harneek Singh to go beyond this in their short letters. The short one-page witness statements from the appellant's brother and nephew made some attempt to provide further particulars but these were brief and vague.
18. The weight to be attached to the witnesses' evidence was a matter for the FTT. The FTT's approach might be described as harsh but it cannot be described as perverse, in the particular circumstances of this case. The FTT was clearly entitled to be concerned that every single witness showed a prolonged and unexplained disregard for the known fact that the appellant was said to have remained in the UK in blatant disregard of immigration law. That does not necessarily mean that the witnesses were obliged to address this for themselves. Rather, the FTT was particularly concerned at the absence of any recognition whatsoever that what the appellant did was wrong as well as the witnesses' views that he made a choice worthy of respect.

Ground 3 - Article 8

19. The FTT's findings of fact are such that the appellant demonstrated a flagrant disregard for immigration law. In those circumstances there is a patently strong public interest in his removal. The FTT properly addressed all relevant factors from [44] to [54] before concluding at [55] that the public interest outweighed the appellant's private life.
20. The appellant's grounds of appeal are not made out. I am satisfied that the decision does not contain a material error of law.

Notice of decision

21. The FTT decision does not contain an error of law and I do not set it aside.

Signed: *Melanie Plimmer*
Upper Tribunal Judge Plimmer

Dated: 11 March 2021