Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/13817/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4th December 2018	**On 25th January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR KARTIK ARVINDBHAI PATEL
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: In person
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of India born on 19th January 1981. The Appellant has an extensive immigration history dating back to January 2006 when he was granted entry clearance as a student. On 27th March 2017 the Appellant applied for indefinite leave to remain on the basis of ten years' long residence.

2. The appeal came before Judge of the First-tier Tribunal Rothwell sitting at Harmondsworth on 26th July 2018. In a decision and reasons promulgated

on 17th August 2018 the Appellant's appeal was dismissed on human rights grounds.

3. The Appellant lodged Grounds of Appeal to the Upper Tribunal on 29th August 2018. On 15th October 2018 First-tier Tribunal Judge Lambert granted permission to appeal. Judge Lambert noted that the Appellant had been found not to meet the requirements of lawful residence under paragraph 276A because his residence as the spouse of an EEA national did not count under paragraph 276B and that the judge had also concluded that he was not entitled to permanent residence under EEA Regulation 15.

4. The grounds took issue with the findings made by the judge as to the exercise of treaty rights, in particular the fact that the judge failed to receive from the representative the requested schedule of the evidence on which he sought to rely, amidst a 462 page bundle. Judge Lambert considered that it was unclear from paragraph 6 of the grounds whether the schedule of documents submitted after the hearing, but not received by the judge, included additional documentary evidence. Insofar as the grounds sought to rely on evidence not provided at the hearing, the judge could not be argued to have been in error.

5. Judge Lambert thereafter concluded that whilst the absence of the schedule itself did not necessarily mean that the judge had failed to consider the relevant evidence in the Appellant's bundle, the judge's findings at paragraph 29 suggested a relatively narrow period from 18th February 2018 to 30th April 2018 during which the Sponsor's employment record was found lacking and that this may have been capable of being resolved by closer examination of the documents described in paragraphs 14 and 15 of the grounds. On that basis he granted permission to appeal.

6. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears in person. The Secretary of State appears by her Home Office Presenting Officer, Mr Bramble.

Submissions/Discussion

7. I explained the process in some detail to the Appellant and he indicated that he understood the purpose of us being here. This was important because Mr Bramble's initial submission is that there is no appeal extant before me. He reminds me that the application that was made was under the Rules on the basis of long residence and that the Appellant, as a family member of an EEA national, did not lawfully have leave and therefore the ten year Rule did not apply but there was discretion to consider the ten year period and as to whether the Appellant's partner had been exercising treaty rights.

8. However, Mr Bramble takes me to paragraph 24 of the judge's decision. That paragraph is of importance and I set it out:

> *"Both parties agreed that I ought to consider whether the Appellant is entitled to permanent residence under Regulation 15. It was agreed that because of the Appellant's EEA spouse's mother's illness and her trips to Slovakia and the problem with the English course, that the relevant dates are 1st May 2013 until 30th April 2018".*

9. Mr Bramble reminds me that the Appellant was legally represented at that hearing. He points out that the ten year period commenced after the Appellant's arrival in the UK in January 2006 and therefore the ten year period would run to January 2016. He notes consequently that there was a gap when it was accepted that the Appellant was not exercising treaty rights and that the ten year period was not sustainable. He submits that the judge's analysis at paragraph 23 was wrong, and that this is not material because as there is an agreed gap therefore it is never possible for the Appellant to succeed because there is never a ten year period of residence. The judge was consequently correct not to go on to consider further periods.

10. Mr Patel in person advises that he gave evidence relating to the ten year Rule and then states, and I did not interrupt him, firstly that he formed a company in 2015 and that he had filed accounts for that period, therefore there was a reason for him to produce evidence as to what he was doing in 2015. He indicates that the company deals with IT support and design software for taxi companies.

11. Secondly he states that evidence was produced that the Appellant's Sponsor was paid a dividend but he does not know why the judge did not see this document and that the Sponsor now works full-time for the company.

The Law

12. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

13. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion

is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

14. All findings made in this matter by the First-tier Tribunal Judge are findings that relate to an application under the EEA Regulations. There is however before me no EEA application nor so far as I can make out was there ever one before the First-tier Tribunal Judge and consequently there is no right of appeal generated although it is appropriate to take into account all the circumstances. This case comes down to the Appellant's relationship with an EEA national and I emphasise as is put to me indeed by Mr Bramble and to the Appellant that there is no right of removal against him anyway.

15. The correct way of dealing with this matter is to find consequently that there is no material error of law in the decision of the First-tier Tribunal Judge. So far as the way in which the judge has dealt with it that would certainly appear to be correct. It was agreed by Mr Bramble that in such circumstances the correct approach was for the Appellant to make a fresh application. That is not a matter that is before me.

Notice of Decision

The decision of the First-tier Tribunal Judge contains no material error of law and the appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge D N Harris 10th January 2019

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed Date

Deputy Upper Tribunal Judge D N Harris 10th January 2019