



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

Appeal Number: HU/00456/2020

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice Centre
On 13 April 2021**

**Decision & Reasons
Promulgated
On 11 February 2022**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MR JATINDER KUMAR
(NO ANONYMITY DIRECTION IS MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Appearances:

For the Appellant: Mr Sobowale, counsel

For the Respondent: Mr C Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of India, date of birth 4 May 1971, appealed against the Respondent's decision dated 18 December 2019 to refuse a human rights based claim made on 20 November 2019. The appeal was refused with reference to the Rules and there was a general consideration of exceptional circumstances for the purposes of Appendix FM of the Immigration Rules. The appeal against that decision which concentrated

on the issue of the Appellant's residence in the United Kingdom for over twenty years came before First-tier Tribunal Judge Sangha, who on 1 April 2020 dismissed that appeal. Permission to appeal was given by Upper Tribunal Judge Kebede on 3 September 2020 in a renewed application. Permission to appeal was granted without an oral hearing on the papers and Upper Tribunal Judge Kebede identified that there was merit in the assertion in the grounds that the Judge had failed to give adequate reasons for dismissing the evidence of two witnesses and for rejecting the documentary evidence and that his approach to the documentary evidence was arguably flawed.

2. Accordingly, directions were given in which there was identified a provisional view of the Judge's errors and directions were given. So far as I am aware neither party pursued the directions given by Upper Tribunal Judge Sheridan in terms of further material being advanced.
3. The nub of the complaint is essentially a reasons argument although there may well be it could be put as a procedural error of law in that Judge Sangha had failed to properly address the evidence and provide sufficiency of reasons.
4. As to the documents that the Judge had not addressed the issue is somewhat complicated by the fact that the Judge did not have the originals of the documents which had been copied and enclosed to him and had not regarded them, although he does not expressly clearly say so, as reliable because they were copies and therefore the weight that could be attached to them applying *Tanveer Ahmed* affected their reliability and applicability in the overall assessment of the evidence. It is not complained that Judge Sangha either failed to apply the appropriate standard or burden of proof in the consideration of the evidence but rather it is said that the weight which the Judge gave to the evidence, documentary and in person by the witnesses, had not been properly considered.

5. Having considered the evidence generally, it seemed to me that a particular difficulty which the Judge had faced was the earlier decision by First-tier Tribunal Judge Gribble in 2018. Before Judge Gribble the matter under appeal was essentially an Article 8 claim to remain based on a long-standing relationship with the Appellant's partner and the human rights grounds for the interference in such a long relationship. As was clear, the case was not being put at that stage before Judge Gribble on the basis of the long residence of the Appellant in the United Kingdom.
6. That claim having failed, the case was then put before Judge Sangha on a different basis, namely the long-term period that the Appellant had been in the United Kingdom. In support of that case the Appellant gave evidence himself and called evidence from a Mr Massih and a Mr Gurwinder Singh, who spoke to their belief as to knowing the Appellant from either during 1998 or after 1998, the language is not entirely precise. Complaint was made by the Home Office that such evidence had not formed part or indeed if there were questions about it had not formed part of the case that had previously been put to Judge Gribble or in the alternative that it was stop gap evidence being provided to fill the holes in the evidence to establish the necessary length of period of twenty years.
7. The Judge provides a number of expressions of doubt which underlay the rejection of that evidence. Some of them are not particularly well-formed but largely reflect the fact that the Judge was really referring to the weight that was to be given to the evidence : To that extent weight was a matter for the Judge who heard that evidence and can assess the witnesses and form a view about how the evidence fits together with the totality of the evidence and then examining it in the round. For my own part it was not the Upper Tribunal's position to essentially provide different reasons from the Judge unless the Judge could not reasonably have reached the reasons or analysis that was arrived at : A clear error of law. Rather, for understandable reasons Mr Sobowale was essentially inviting the criticism of the Judge's reasoning because he at its heart , for the reasons which he has made plain ,significantly disagreed, with the conclusions that the

Judge reached. Whilst I entirely understand the thought that he has given to this matter and his concern about the evidence that the Judge rejected, on its face the Judge gave sufficient reasons as to why he was not persuaded on a balance of probabilities that the Appellant had established the necessary period of residence with sufficiently reliable evidence.

- 8 As to the documentary evidence, which I was not taken to in any particular detail but of which the Judge had raised doubts about the absence of original documentation, again it seemed to me that that must be read as a whole rather than nit-picking amongst the overall decision. There was no agreement, contrary to what it seems Mr Sobowale probably thought, the documentation, accompanying the previous applications in 2012 and 2014, had in fact been returned to the Appellant's former and different representatives . It was not the case, as it was thought, by the Home Office Presenting Officer at the hearing before First-tier Tribunal Judge Sangha may have accepted, that the evidence was still held but effectively lost within the Home Office files. Mr Bates has helpfully scrutinised the electronic files of the Home Office in relation to those earlier appeals and has provided the hearing with the Post Office delivery note numbers which were attached, as he understands it, to the relevant papers returned to the then representatives. It seemed to me it was correct to say in all likelihood that they had not been returned directly to the Appellant but I do not speculate on what he has to say about becoming aware whether those documents were ultimately returned to his then representatives or what had happened to them. I do not speculate on those matters but it seemed to me that whilst Mr Sobowale was disadvantaged by the point not having been raised before, I have no reason or justification to doubt Mr Bates did his best to look through the files and identify the whereabouts of those documents.
9. In the circumstances, whilst I might not have reached the same conclusion that First-tier Tribunal Judge Sangha reached, it seemed to me that the fact I might have differed from the trial judge was not sufficient to show an error of law but rather the kind of difference that was inevitable in an

appeal process and it would be inappropriate to criticise the Judge on this basis for he could only do what he could with the material he had and make an assessment on its reliability, which he did. I might not have reached the same view but that was not the end of the matter.

10. In these circumstances, I have cast an eye over the documents that formed part of the Appellant's appeal bundle and for my own part it did not seem to me that they were or represented a substantive buttress to the Appellant's claim as to his past in the UK for the totality of the twenty year period that he would have needed to establish. They certainly help but they are not a complete answer to the points being raised by the Respondent.
11. For these reasons, whilst it seemed to me there could be a measure of sympathy to the Appellant in the long appeal history in which he has been engaged one way or another but I do not find that the decision of First-tier Tribunal Judge Sangha demonstrated any error of law. If it was necessary to do so, such errors of fact as may have been made did not amount to material ones which would have affected the outcome of the appeal. For these reasons I therefore find notwithstanding the considered grant of permission to appeal by Upper Tribunal Judge Kebede I respectfully disagree with the conclusion she ultimately made that there was an arguable case for the provisional view which she had reached that there was a material error of law.

DECISION.

The Appeal is dismissed

No anonymity direction is made.



Signed

Deputy Upper Tribunal Judge Davey

Dated

3 February 2022

TO THE RESPONDENT
FEE AWARD

The appeal has failed and therefore the situation stands that no fee award is appropriate.

A handwritten signature in black ink, appearing to read 'T. Davey', enclosed in a thin black rectangular border.

Signed as above

Signed

Dated 3 February 2022

I regret the delay in promulgation. Unfortunately, the file and typed decision were misplaced in the administration.

Deputy Upper Tribunal Judge Davey