IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000389

First-tier Tribunal Nos: HU/55227/2023
LH/05036/2023

Extempore decision

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 8th of May 2024

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

GOPALSINH VAGHELA
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: In Person
For the Respondent: Mrs A Nolan, Senior Home Office Presenting Officer

Heard at Field House on 21 March 2024

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Malcolm ("the judge") dated 14 December 2023. The judge dismissed an appeal brought by the appellant, a citizen of India born in January 1981, against a decision of the Secretary of State dated 11 April 2023 to refuse his human rights claim made in the form of an application for leave to remain in the United Kingdom. Permission to appeal was granted by Upper Tribunal Judge Perkins.

2. The judge heard the appeal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002.

Factual background

3. The appellant claims to have entered the United Kingdom in September 2007. His first application for leave to remain appears to have been submitted on 19 May 2012. The application was successful and, on 26 July 2012, he was granted leave until 30 August 2014. However, that grant of leave was curtailed on 24 May 2014. On the same day he applied for further leave to remain. The application was rejected on 26 August 2014. That was the first of a total of ten applications the appellant was to make following the curtailment of his leave, culminating in the application to the Secretary of State which has led to the refusal of the human rights claim that was under appeal before the judge.

4. The appellant appeared before me as a litigant in person. He explained that the reason he wanted the appeal to be allowed was because he had lived in the United Kingdom for almost seventeen years. Under Article 8 of the European Convention on Human Rights he should be granted leave to remain. He explained that he reports to the immigration authorities monthly, and that he is a law abiding citizen following the rules and regulations that attach to his stay. He has been on temporary admission or immigration bail for a number of years.

5. The appellant suggested in oral submissions that Section 3C of the Immigration Act 1971 militated in favour of his appeal being allowed. Those were the observations that Judge Perkins made, albeit in rather guarded terms, when granting permission to appeal. Judge Perkins said:

> "The grounds of appeal allege that the appellant has had, or should be treated as having, leave throughout that time because he always made promptly a further application almost immediately after an earlier application has been refused.
>
> I am doubtful that there is any merit in this contention but I am not satisfied that there is a satisfactory explanation for rejecting, rather than simply asserting that it is not true, in either the Refusal Letter or in the First-tier Tribunal's Decision and Reasons and so I have decided to give permission. The Appellant must understand that I am NOT signalling any confidence in the underlying merits of his case but I am concerned that the explanation for the Respondent's case may not be adequate." (Emphasis original)

Judge Perkins directed that this may be a case where a notice under rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 could be helpful. It appears that the Secretary of State has not submitted a rule 24 notice.

The hearing in the Upper Tribunal

6. I explained to the appellant that my role would be to assist him to understand the process, to explain what an appeal to the Upper Tribunal involves, and why the role of a judge on appeal is restricted to considering whether the decision of the judge in the First-tier Tribunal made an error of law. It is not my role to substitute my own view for the appeal that was heard before the First-tier Tribunal; it is simply to decide whether the judge made an error of law in reaching her decision.

No error of law

7. I do not consider that the judge made an error of law for the following reasons.

8. The judge was entitled to conclude, as she did, that the private life provisions of the Immigration Rules were not met. The appellant had lived in India until he was 26 years old. He had written, in documents provided to the First-tier Tribunal, that he still has some family there. Moreover he had demonstrated that throughout his unlawful residence in the United Kingdom that he has been able to survive and support himself. The judge also found that the restrictions to which he is subject to in the United Kingdom will not apply upon his return to India.

9. In my judgment, those were factors that the judge was entitled to take into account when concluding that the appellant would not face "very significant obstacles" to his integration in India. Indeed other than stating he could not go back to India in broad terms, the appellant did not take issue with any of the judge's analysis under that heading.

10. The main reason the appellant invited me to allow this appeal was because of the overall length of his residence in the United Kingdom. It has, on his case, now reached seventeen years.

11. The difficulty with that submission is that seventeen years of continuous residence in the United Kingdom in isolation does not meet any requirements of the Immigration Rules. Of course, ten years of continuous *lawful* residence is a different matter. Judge Perkins' decision means that it is necessary to consider whether the appellant's repeated immigration applications may have extended his leave, such that it would now be appropriate to conclude that he had accrued ten years' of continuous lawful residence. In my judgment the appellant cannot be said to have accrued ten years' continuous lawful residence. I accept Mrs Nolan's submissions in this respect. The lawful residence to which the appellant can point in the chronology of his immigration history merely lasts from 26 July 2012 until the rejection of his application for leave to remain on 26 August 2014. Time spent on immigration bail or temporary admission does not, in these circumstances, amount to a lawful basis of stay, or otherwise count as lawful residence.

12. I will assume for present purposes that the appellant's leave was extended until 26 August 2014. While the appellant ultimately went on to submit a further nine applications, none of those applications resulted in a grant of leave to remain, and each of those applications had been submitted following the expiration of the appellant's leave as originally extended by section 3C of the Immigration Act 1971. I explained to the appellant at the hearing that, although in some circumstances the Immigration Rules permit an application to be made by someone who is an overstayer if it is made within a certain period following the refusal or rejection of an earlier application, that is an entirely different matter to the individual concerned holding some form of leave to remain at the relevant times. To use the parlance in the long residence cases, this is a case of "open ended" overstaying rather than "book ended" overstaying. By that I mean that the period of overstaying which followed the curtailment of the appellant's leave on 24 May 2014 has never been followed up by a grant of leave to remain, and the total length of the appellant's lawful residence in the United Kingdom is a

period of just over two years from 26 July 2012. Section 3C was therefore not engaged throughout the period of the further nine applications the appellant went on to submit.

13. The reality is that the appellant is now an overstayer of a considerable length of time. That is a factor that the judge was entitled to take into account when reaching her conclusion that the removal of the appellant to India would not be disproportionate for the purposes of Article 8 of the European Convention on Human Rights. That is a conclusion which, despite viewing the appellant's submissions with the most benevolent eye possible, I find was open to the judge to reach. I therefore dismiss this appeal.

Notice of decision

The appeal is dismissed.

The decision of the First-tier Tribunal did not involve the making of an error of law.

Stephen H Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Transcript approved, 23 April 2024