



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

Appeal Number: IA/00420/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 9 October 2014**

**Determination**

**Promulgated**

**On 30 October 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR ALI IMRAN MALIK**

Respondent

**Representation:**

For the Appellant: Mr T Wilding, Home Office Presenting Officer

For the Respondent: Ms J Heybroek, Counsel instructed by Lincoln solicitors

**DECISION AND REASONS**

1. The respondent is a citizen of Pakistan and his date of birth is 17 March 1983. I shall refer to him as the appellant as he was before the FtT (First-tier Tribunal). On 3 May 2013 he made an application for leave to remain in the UK as a Tier 1 (Entrepreneur) Migrant under the Points Based System. His application was refused on 29 November 2013. The

appellant's wife, Mrs Sumera Ali, was an appellant before the FtT having applied for leave to remain as her husband's partner and her application was also refused.

2. The appellant and his wife appealed and the appellant's appeal was allowed by Judge of the First-tier Tribunal Monro in a decision of 4 August 2014 that was promulgated on 5 August 2014 (following a hearing on 22 July 2014). The Judge allowed the appellant's appeal under paragraph 276B of the Immigration Rules. Ms Haybroek, who represented the appellants before the FtT, withdrew the appellant's wife's appeal on her behalf at the hearing before Judge Monroe.
3. The Secretary of State appealed against the decision of the FtT and permission to appeal was granted by Judge Heynes on 21 August 2014.
4. There is merit in the grounds seeking leave to appeal. The Judge allowed the appeal without adequately engaging with the requirements of paragraph 276B of the Immigration Rules. There was no proper analysis made of continuous residence and the Judge went onto to allow the appeal under the rules without giving adequate reasons. There is a discretionary basis under the rules which had not been exercised by the Secretary of State. The Judge made a material error of law. This was conceded by Ms Heybroek. I set aside the decision of the Judge to allow the appeal of the appellant under the Rules.
5. At the hearing before me Mr Wilding confirmed that the appellant had been granted ILR since his appeal had been allowed. Ms Heybroek requested time to confirm the appellant's wife's position as she believed that her application was still pending. She did not want to withdraw the appellant's appeal before the appellant's wife had been granted leave. She asked for seven days to apply to withdraw the appeal. The UT Tribunal received a letter on 10 October 2014 asking for Mrs Ali's appeal to be withdrawn. However, Mrs Ali's appeal has already been withdrawn before the First-tier Tribunal which should have issued a notice of withdrawal pursuant to Rule 17 (2) of the 2005 Procedure Rules.
6. In relation to the appellant's appeal it falls to be treated as abandoned in accordance with section 104 (4A) of the Nationality, Immigration and Asylum Act 2002.

Signed Joanna McWilliam

Date 23 October 2014

Deputy Upper Tribunal Judge McWilliam

