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Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/15626/2014

THE IMMIGRATION ACTS

At Field House
on 7th August 2015

Decision and Reasons Promulgated
on 18th August 2015

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL FARRELLY

Between

MR MOHAMMAD IQBAL
(NO ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Coleman, Counsel, instructed by Lee Valley Solicitors.

For the Respondent: Mr. Kadola, Home Office Presenting Officer.

DECISION AND REASONS

Introduction

1. The appellant claimed asylum on 7 August 1995 and his claim was refused the following year. He subsequently absconded. On 7 July 2012 he applied for indefinite leave to remain on the basis of long residence. His application was refused on 4 March 2014.

2. Because his application was submitted before the changes to the immigration rules effective from the 9th July 2012 it was considered under paragraph 276 B (i) (a) and (b). This provides that a person seeking indefinite leave to remain on the basis of long residence must show at least 10 years continuous lawful residence or at least 14 years continuous residence and there is no reason why it would be undesirable to grant indefinite leave. Regard was to be had to the person's circumstances. There was also a requirement to have sufficient knowledge of the English language and about life in the United Kingdom, save for those under the age of 18 or aged 65 or over. The appellant's lawful residence ended on 15 July 1986 when, having been granted temporary admission, he failed to report. The respondent concluded insufficient evidence had been provided that he had resided in the United Kingdom continuously to satisfy the necessary 14 year route.

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3. His appeal was heard before First-tier Judge Miles on 10 March 2015. The judge heard from the appellant and his wife and documents were supplied to show his presence. At paragraph 16 of the decision the judge accepted that since his initial entry in August 1995 he had lived continuously in the United Kingdom, albeit without leave.
4. The decision at paragraph 17 indicates at hearing the judge raised the issue of the English language requirement. The judge refers to the appellant relying upon an ESOL entry 1 level certificate. The judge stated:

“... In my judgement that certificate does not deal with the knowledge about life in the United Kingdom requirement which, from my own research clearly applied at the time of this application. Accordingly therefore and despite my finding in favour of the appellant with regard to having established 14 years continuous residence. I am not satisfied that his application satisfy the requirements of rule 276B (iv) Hc395, and therefore his appeal cannot succeed under the rule.”

5. Permission to appeal was granted on the basis it was arguable the judge erred in finding the ESOL certificate did not meet the requirements at the date of application. This had not been raised by the respondent, with the judge referring to ‘my own research’ without specifying what that was.

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6. At hearing, Mr Coleman provided me with a Home Office statement dated April 2013 dealing with changes to the requirements in the immigration rules from October 2013 in relation to the knowledge of language and life in the United Kingdom (KoLL) requirement. It states that those who

have applied before 28 October 2013 will have satisfied the KoLL requirement by either passing the life in the UK test or by taking an ESOL qualification (probably at a level below B1). This would not be sufficient should they later apply for naturalisation.

7. Mr. Kadola was able to provide the archived version of the relevant immigration rule covering 14 June 2012 to 8 July 2012, the appellant's application having been made on 7 July 2012. Paragraph 276B sets out the requirements to be met for indefinite leave to remain on the ground of long residence. Paragraph 276B (b) refers to having had at least 14 years continuous residence. Paragraph 276B(f) requires that regard to be had to representations made on behalf of an applicant and goes on to state:

‘(iv) the applicant has sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom unless he is under the age of 18 or aged 65 or over at the time he makes his application appellant.’

I was then referred to paragraph 33 B of the immigration rules which deals with satisfying the requirement of knowledge of language and life in the United Kingdom. It states as follows:

‘A person has sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom for the purpose of an application for indefinite leave to remain under these rules (unless paragraph 33 BA applies) if –

- (a) i) he has attended and ESO well course at an accredited college ;
 - ii) the course use teaching materials derived from the document, entitled “citizenship materials for ESOL Learners”(ISBN 1-84478-5424);
 - iii). He has demonstrated relevant progress in accordance with paragraph 33F : and
 - iv). he has attained a relevant qualification;’

8. Mr. Kadola accepted that the appellant met all of these requirements. He pointed out that 33B (b) was not met. However, if paragraph 33B is considered in its entirety it is clear that the use of ‘or’ after (a) (b) and (c) is a disjunctive. As he meets paragraph 33 B (a) he meets the knowledge of the English language and life in the United Kingdom requirement for the purposes of application for indefinite leave to remain.
9. Mr. Kadola provided me with a copy of the unreported decision of the President and Vice President cited as IA/25958/2013. Paragraph 3 of the decision refers to the use of ESOL certificates and refers to paragraph

33B of the immigration rules from when this was originally introduced on 2 April 2007, as amended from 7 April 2010. It replicates the original regulation.

10. I conclude that First-tier Judge Miles materially erred at paragraph 17 of the decision in finding the appellant did not meet the knowledge about life in United Kingdom requirement with his ESOL entry one certificate. Consequently, the decision cannot stand. There being no remaining areas in dispute I remake the decision allowing the appeal.

Decision

The First-tier decision contains a material error of law and cannot stand. I remake the decision allowing the appeal.

Deputy Upper Tribunal Judge Farrelly

Fee

The appellant paid an appeal fee and no fee award could be made by the First-tier Judge because he had lost his appeal. The appellant has now succeeded effectively on the same evidence available to the First-tier Judge. I asked the representatives for submissions on my power in relation to fees but neither could assist. This was considered in Singh (fee award: ancillary decision) [2013] UKUT 00179 (IAC). The Upper Tribunal there concluded that it had no jurisdiction in relation to fee awards. Consequently, I cannot change that aspect of the decision.

Deputy Upper Tribunal Judge Farrelly