



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

Appeal Number: IA/16865/2014

**THE IMMIGRATION ACTS**

**Heard at Sheldon House, Bradford  
On 3<sup>rd</sup> March 2015**

**Determination Promulgated  
On 10<sup>th</sup> March 2015**

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**YASIR JAMIL**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms A Faryl, counsel, instructed by Beachwood solicitors

For the Respondent: Mr P Diwnycz, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant appeals a decision of the First-tier Tribunal, which dismissed an appeal against a decision of the Secretary of State to refuse him indefinite leave to remain on the basis of long residence.
2. Permission to appeal had been granted on the basis that it was arguable that the First-tier Tribunal had misconstrued the length of time the applicant spent in Pakistan and that this may have infected the First-tier Tribunal judge's findings as to the ties the applicant had with Pakistan. The grant of permission included a

direction that the appellant would be expected to file and serve a schedule of his entry and exit to the UK, UAE and Pakistan supported by passport entries.

3. In her Rule 24 response the SSHD asserted that it was unarguable that the appellant could not meet the Rules and that if there had been an error by the First-tier Tribunal judge as to the time spent in Pakistan in 2010 that was immaterial given that there was adequate evidence that regardless of whether he had family in Pakistan, he had continuing ties there.
4. Although there is reference to a discretion this is discretion that is not in the Rules and not justiciable by the First-tier Tribunal through a statutory appeal.
5. The First-tier Tribunal held

26. The appellant accepts that he has spent the majority of his life outside the UK. But whilst he is a national of Pakistan, he claims that he has no family or friends remaining in Pakistan or home to go to. However he returned to Pakistan in April 2010, remaining there on his own account until August 2010 when he went to the UAE. He claims he was not permitted to apply for a visa for the UK from Pakistan because he is not a permanent resident of Pakistan. Also relevant is his claim that he had to leave the UK because his father had a heart attack in the UAE. He also claims that his grandmother passed away in Pakistan. However the reason the appellant had to leave was because his appeal had been dismissed and his appeal rights were exhausted. I note that in the correspondence with the Home Office the appellant made no mention of his father's illness and in fact said that his departure was delayed because he was waiting for a refund from his college.

27. I have taken account of the appellant's evidence and the witness statement of his brother, to the effect that they feel that they have adopted the culture and lifestyle of the UK. They have completed most of their education in the UK and have a close circle of friends with whom they study and socialise. They say they were schooled in UAE. The appellant's brother is a British National with a wife and family in the UK.

28. However even taking all these factors into account I do not accept the appellant has no ties to Pakistan. His culture and background is Pakistani and he has spent time living in Pakistan. He returned and lived there for several months on what appear to be two occasions in 2010. Even if the appellant has no remaining family or friends in Pakistan, I am satisfied that he has not lost all ties to Pakistan in the sense intended by paragraph 276ADE. He is now an adult with the benefit of education in UAE and the UK. He was able to come to the UK and look after himself for a number of years. There is no credible reason why he should not go back to Pakistan and pursue his career and life there, taking advantage of his experience in the UK. That he does not have a home to go to or that his family life elsewhere is not a compelling feature. His own history is that he has been able to move back and forth between UAE and Pakistan even if he may have no right to settle in UAE, he is not being denied access to his family and he may apply for short visits to visit his family in the UK.

6. The First-tier Tribunal judge has incorrectly stated that the appellant spent between April 2010 and August 2010 in Pakistan. The evidence before the judge was of

short and very occasional visits to Pakistan; the last such visit being in November 2011 for 21 days in order to undertake the necessary rituals following his grandmother's death in Pakistan the previous year. The visit before that was for 16 days for the funeral of his grandmother. In 2010 he spent 89 days in UAE and in 2011 he spent 43 days there. He was in the UK the rest of the time.

7. The judge failed to make findings on whether the appellant had relatives in Pakistan and if so how closely related they were; failed to make findings on the appellant's father's health in UAE; failed to make findings on his and his brother's claims to have been educated in the UK and UAE; failed to refer to the evidence he relied upon to state that the appellant has been "able to move back and forth between UAE and Pakistan; failed to take account of the fact that he was 6 weeks old when he left Pakistan.
8. The most glaring errors in the determination are to fail to even acknowledge that the appellant left Pakistan aged 6 weeks, has only returned for very short periods of time and erred in finding that he had lived in Pakistan for five months in 2011.
9. I asked Mr Diwnycz to identify the "adequate evidence" that was before the First-tier Tribunal such that the decision was sustainable even though there were errors as set out above. He drew my attention to the address given in the appellant's passport as a permanent address in Pakistan and that the appellant had not spent half his life here in the UK. Other than this he was unable to identify any other evidence. These two matters come nowhere close to being "adequate evidence".
10. I am satisfied that the First-tier Tribunal judge erred in law in failing to make findings on relevant evidence and erred in reaching a finding that was not open to him on the evidence before him. The consequences of such errors are that the decision is fundamentally flawed and I set it aside to be remade.
11. I heard brief oral evidence, in English, from the appellant and his brother.
  - a. The appellant said that the address in the passport was a guesthouse. The passport was issued in the UAE and the passport officer said that he had to put a Pakistani address otherwise he could not have a passport. The officer knew it was a guesthouse but said it didn't matter.
  - b. The appellant's brother said that he no longer had a Pakistani passport and obtained a visa on the very few occasions when he travelled to Pakistan; when he did have a Pakistani passport he also used the same guesthouse address.
  - c. The whole family, including the grandmother had travelled to and lived in the UAE.
  - d. The appellant speaks Arabic and English; he can understand Urdu but cannot write it.
  - e. The appellant's mother and father, a sister and a brother live in UAE. He has a brother in the UK. His mother has a brother in the USA. His father was ill in the UAE and received treatment there.

- f. The appellant has no cousins, nephews, nieces or other more distant relatives in Pakistan; the family owns no property there and whenever they went for holidays they stayed in guesthouses.
  - g. The appellant has been educated in UAE and the UK; he has not been educated in Pakistan.
  - h. The appellant's brother's wife's family live in London; he and his wife have a five-month-old baby.
  - i. The visit in 2008 was a family visit because the grandmother wanted to visit her husband's grave
  - j. The visit in 2006 was a holiday.
  - k. There had been no other visits to Pakistan between 1999 and 2006
  - l. If the grandmother had died in UAE, the visit in 2011 to Pakistan would not have taken place; the necessary rituals would have been done in UAE.
12. The appellant and his brother are credible witnesses and the documentary evidence before me supports their evidence as to the number of visits. Mr Diwnycz did not challenge their evidence. I accept the evidence as set out in paragraph 11 above.
13. The only matters upon which Mr Diwnycz relied to show that the appellant retained cultural and social ties with Pakistan were that he was a Pakistani national, that he spoke Urdu (although acknowledging that he could not write Urdu and that he spoke fluent English), that he had cultural ties in Pakistan until his grandmother died (although it is not clear on what basis that was argued given the grandmother was only visiting when she went to Pakistan and died there) and finally that there was a "permanent address" recorded in his passport.
14. I accept the appellant's explanation for the insertion of the address in the passport. I do not accept that being a Pakistani national with the characteristics set out in paragraph 11 amounts to cultural and social ties with Pakistan without more. This young man has plainly done little more than visit Pakistan for occasional trips with his family who themselves only travelled very infrequently.
15. It was accepted by Mr Diwnycz that if the appellant could adequately prove a lack of social and cultural ties with his country of nationality, then he met the requirement of paragraph 276ADE of the Immigration Rules. I am completely satisfied that this appellant has no cultural and social ties with Pakistan other than that he is a national of that country. That is plainly not a cultural and social tie.
16. I allow the appeal under the Rules. It follows that the appeal on Article 8 grounds must also succeed.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision

I re-make the decision in the appeal by allowing it

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I was not asked to make one and I see no reason to.

Date **10<sup>th</sup> March 2015**

Upper Tribunal Judge Coker