



**Upper Tribunal
(Immigration and Asylum Chamber)**
IA/44949/2014

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Glasgow
On: 1st December 2015**

**Decision & Reasons
Promulgated
On: 11th December 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

MOHAMMAD ZAHID

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Winter, Advocate, instructed by Gray & Co, Solicitors
For the Respondent: Mrs S Saddiq, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal is against a determination by First-Tier Tribunal Judge J C Grant-Hutchison, promulgated on 21 May 2015, dismissing the appellant's appeal against refusal of leave to remain on the basis of his private and family life in the UK.
2. The case has a long and complicated history. After sundry procedure in the Upper Tribunal, it came to be common ground that if the appellant had made the application which leads to these proceedings on the basis of long residence, it would have fallen to be considered under the "old Immigration Rules" as they stood prior to July 2012, and that such an application would more than likely have been granted.

3. The respondent's continued opposition to the appeal rested on two grounds:-
 - (a) the respondent could not be faulted for considering the appellant's case on the basis of the application which he made; and
 - (b) there was no error by the First-Tier Tribunal because the point was not argued at that stage.
4. Mrs Saddiq also pointed out that the appellant has the options of now making an application to the respondent on the basis of long residence, or of making an application for settlement if and when he succeeds in passing his life in the UK test (which, it appears, he has taken and failed about ten times).
5. There is some force in the respondent's remaining arguments. Mr Winter referred to the discussion in *McDonald's Immigration Law and Practice*, 9th ed., vol. 1, paragraph 20.15(6). This case is not the clearest example of where an appellant has applied under one rule but his case should obviously be governed by another; but neither is it at the level where the decision maker or Tribunal would require to "conduct a roving enquiry" in order to bring the facts into another setting. The circumstances of the appellant's long residence and his immigration history were all before the respondent and before the Tribunal. It is unfortunate the matter was not developed until a late stage, but once the correct framework of the transitional provisions is identified, it does become an obvious case.
6. The Upper Tribunal should generally be reluctant to detect error of law where the argument has not been squarely put to the First-Tier Tribunal Judge; but, on the other hand, procedure should not be unnecessarily multiplied in a case which has been going on for a very long time and which is now capable of a clear resolution.
7. The determination of the First-Tier Tribunal is **set aside**. On the evidence produced, and on consideration of the case in the correct light, the appellant meets the terms of the Immigration Rules in respect of long residence, and his appeal is **allowed**.
8. No anonymity order has been requested or made.



2 December 2015
Upper Tribunal Judge Macleman

