



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/20805/2016

THE IMMIGRATION ACTS

Heard at Field House
On 9th July 2017

Decision & Reasons Promulgated
On 14th August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR RAO MUHAMMAD WAQAS
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant in the Upper Tribunal/the Secretary of State: Mr C Howell, Home Office Presenting Officer

For the Claimant: Ms A Smith, Counsel, instructed by Noble Law Solicitors

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of First-tier Tribunal Judge Housego promulgated on 2nd February 2018 following an appeal heard at Harmondsworth on 11th January 2018. For the purpose of clarity throughout this decision I will refer to Mr Waqas as the claimant and to the Secretary of State as being the Secretary of State, given the fact that Mr Waqas was the Appellant before the First-tier Tribunal, but the Secretary of State is now the Appellant before the Upper Tribunal.

2. In Judge Housego's decision, which was signed on 31st January 2018, Judge Housego noted that the claimant is a male citizen of Pakistan who was born on 16th April 1987 and that the decision under appeal before Judge Housego was on the basis of an application made by him for indefinite leave to remain based upon ten years' lawful residence in the UK pursuant to Section 276B of the Immigration Rules HC 395 (as amended).
3. Judge Housego quite properly set out the Claimant's immigration history before going on to consider the decision under appeal and the reasons given by the Secretary of State originally for refusal. He then noted what the particulars of the appeal were before going on to consider both the burden and standard of proof and the applicable law and quite rightly first of all considered in his findings on the question as to whether or not the requirements of the Immigration Rules were met as although this was not an appeal under the Immigration Rules, as Judge Housego quite properly notes, the Immigration Rules are relevant in terms of the Article 8 consideration as to whether or not the Rules actually have been met and the extent of the public interest in removal.
4. Judge Housego found that the argument put forward by Counsel then representing the claimant as to Section 3C leave was correct such that in fact the Claimant should have been granted leave to remain as being lawfully resident in the UK for ten years and that the Claimant did not have any gaps of more than 28 days such that the ten year period was not met. Judge Housego noted that that was a relevant factor which indicated that the appeal under Article 8 should succeed by reason of the case of **Mostafa**.
5. He found specifically that, running the time backwards, there was no break in leave of more than 28 days.
6. Judge Housego therefore quite properly considered the application under the Immigration Rules and then went on to consider that Article 8 in terms of private life he found was plainly engaged, given the length of residence and the degree of integration of the Claimant into life in the UK, including his qualification into a profession he wished to and also had previously begun to practise, as an accountant, before being stopped by the previous decision of Judge Pedro.
7. The Judge then went on at paragraph 40 to consider the public interest in the maintenance of effective immigration control on the one hand and the benefits that the Claimant would bring in terms of his contribution to society on the other and the fact that he had been in the UK for nearly twelve years and had no recourse to public funds, was professionally qualified in a field in which he had ceased to work only because he was not permitted to do so and in which he wished to set up himself in professional practice where he would not only assist clients but also doubtless employ others. On that basis and having considered all the factors Judge Housego considered that the decision taken was disproportionate to the legitimate public end sought to be achieved and allowed the appeal on human rights grounds as being a breach of the Claimant's rights to a private life in the UK for the purposes of Article 8.

8. The Secretary of State sought to appeal against that decision and in the Grounds of Appeal it is argued that the First-tier Tribunal Judge materially erred in failing to properly address the statutory considerations set out in Section 117B of the Nationality, Immigration and Asylum Act 2002. It was argued that the proportionality balance has not been correctly undertaken and that the decision to allow the appeal contained a material error. It was further argued within the Grounds of Appeal that following the case of **Dube (ss.117A-117D) [2015] UKUT 00090 (IAC)** judges are required statutorily to take into account a number of enumerated considerations and that they are not simply an a la carte menu of considerations and that it is at the discretion of the judge to apply or not apply and that judges are duty-bound to have regard to the specified considerations.
9. It was further argued that the judge erred by making a decision that the Claimant met the terms of ten years' lawful residence and stated that:

"Application made 5th June 2013, however, refusal was issued 13th May 2015, which is a total 33 days and not less than the 28 days which the FtTJ has calculated. I submit that there is still a large gap of several months which would make him short of the required ten year qualifying period, which means that he cannot succeed under the Rules for long residence."
10. It was further argued that the First-tier Tribunal Judge had stated at paragraph 39 of the decision that the Claimant's private life was engaged but that, given that the Claimant had no permanent status in the UK, that was not accepted.
11. I am most grateful to the helpful submissions both by Ms Smith of Counsel and also by Mr Howell, Senior Home Office Presenting Officer, on behalf of the Secretary of State and also for the helpful Rule 24 reply drafted by Ms Smith, setting out the claimant's position.
12. Quite properly in accordance with his duty to the court, Mr Howell, having considered the Rule 24 reply on behalf of the claimant and having heard various oral submissions made in respect thereof by Ms Smith, quite properly conceded that in effect the Grounds of Appeal which make reference to the judge having erred in terms of the Claimant reaching the ten years' lawful residence criteria under the Immigration Rules that the arguments raised in the grounds do not make chronological sense and that the chronology set out in the Grounds of Appeal is wrong.
13. Mr Howell quite properly concedes that effectively that although it had been argued that the Claimant became appeal rights exhausted on 11th April 2015, the notification of which is at page 75 of the original before the First-tier Tribunal, and that the Claimant thereafter made an application on 13th May, based upon his private life, in fact the evidence before the First-tier Tribunal in terms of a witness statement from the claimant was that he had not received that notification from the Upper Tribunal until 24th April such that his application was made within the requisite 28 day period and on that basis Mr Howell conceded that in such circumstances the decision of the Judge

regarding whether or not the Claimant met the ten year lawful residence under the Immigration Rules was met was no longer being challenged by the Secretary of State.

14. He conceded that in effect, the Claimant not having received the notification until 24th April, that the ten years rule was met and he did not on behalf of the Secretary of State seek to pretend otherwise. He further and quite properly that in light of the requirements of the Rules being met that the Secretary of State was no longer seeking to argue that considering paragraph 39 onwards of the decision of the First-tier Tribunal the judge had materially erred in respect of his application of Article 8 to the circumstances of this particular case, in light of the findings regarding the Immigration Rules having been met.
15. He conceded that therefore it was no longer being argued that this decision contained a material error of law and in light of those concessions I find that the decision of First-tier Tribunal Judge Housego does not contain a material error of law and I dismiss the appeal.

Notice of Decision

The decision of First-tier Tribunal Judge Housego does not contain a material error of law and the decision is maintained.

No anonymity decision was made by the First-tier Tribunal and no such application is being made before me for any anonymity direction and therefore I do not make any anonymity direction in this case.

Signed

Date 10th July 2018



Deputy Upper Tribunal Judge McGinty