



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/13943/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 12 March 2019
Prepared 12 March 2019**

**Decision & Reasons Promulgated
On 16 April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MR GOUTAM CHOUDHURY
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Richardson, counsel instructed by Paul John & Co Solicitors

For the Respondent: Miss Willocks Briscoe, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant a national of India, date of birth 16 March 1976, appealed against the Respondent's decision, dated 25 October 2017, to refuse his application for leave to remain on the basis of ten years' continuous lawful residence in the UK and on human rights grounds.
2. The appeal against that decision of FtTJ O'Keeffe was dismissed on 11 October 2018.

3. The Judge concluded that the Appellant did not succeed under the Rules because for reasons given periods of time he had been in the UK where he had “overstayed” militated against the current application. In addition the Judge also concluded that the appeal failed on human rights grounds under Article 8 ECHR.
4. The grounds of appeal against the Judge’s decision did not challenge the Judge’s conclusions on the human rights based claim.
5. Permission to appeal the Judge’s decision was given by Upper Tribunal Judge Frances on 13 February 2019. The basis of the application was made by the Appellant on the basis of his understanding as the law as it was taken to be at the time. It was said that the Judge had essentially not properly reasoned the conclusion he reached under the Rules.
6. Most unfortunately for the Appellant events have overtaken him because of the decision delivered by Mr Justice Sweeney on 7 March 2018 dated 22 October 2018 but it is thought was promulgated. The case of R (on the application of) Ahmed v Secretary of State for the Home Department (para 276B – ten years’ lawful residence) [2019] UKUT 10 addressed the issue of to what extent it is required at the date of application that you have accumulated the ten years lawful residence for the purposes of the application under paragraph 276B of the Immigration Rules.
7. The unfortunate consequence of the analysis which stands is that the Appellant had not at the material time accumulated the necessary period of lawful residence and could not do so unless he also took into account other periods which for the purposes of paragraph 276B are not to be counted in. In the result whilst the appeal has not been conceded by the Appellant I find that in the light of the current case law there was no material error of law in the Judge’s decision. Even if albeit I accepted that the reasons the Judge gave were wrong the outcome was the inevitable consequence come what may.

8. For those reasons I find the Original Tribunal made no material error of law, the Original Tribunal's decision stands.

NOTICE OF DECISION

9. The appeal is dismissed.
10. No anonymity direction was made nor is one required or necessary.

Signed

Date 20 March 2019

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT

FEE AWARD

The appeal has failed and therefore no fee award is appropriate.

Signed

Date 20 March 2019

Deputy Upper Tribunal Judge Davey