Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/43613/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 11th September 2014	**On 18th September 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

MR LUCKY AHMED

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Bellara, Counsel instructed by Edward Alam & Associates
For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DETERMINATION AND REASONS
EXTEMPORE JUDGMENT

1. The Appellant appeals with permission a decision of the First-tier Tribunal (Judge Monro) promulgated on 16th May 2014 in which the judge dismissed the Appellant's appeal against the refusal of an application for leave to remain brought on private life provisions of the Immigration Rules.

2. The judge records at paragraph 32 that there was a factual dispute between the parties as to whether or not the Appellant had submitted an in-time application in 2010, i.e. considerably prior to the making of the application the subject of the appeal proceedings. The judge resolved that

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dispute against the Appellant and did so on the basis that the Appellant's assertion that he had made a valid application, in particular by attaching a cheque in respect of the fees, was not made out before him because there was "an absence of a paper train" as he described it, to support that contention, in particular, the contention that he attached a cheque to his application. As a result, when assessing the Appellant's position in respect of his private life the judge treated him as being someone who had been without leave since, and at paragraph 25 2000 is mentioned but it is clear that that is a typographical error and May 2010 is intended. Accordingly the judge treats his application as one of regularisation rather than extension.

3. The Grounds of Appeal take issue with the judge's finding on the basis that contrary to the judge's assertion at paragraph 32 the cheque that the Appellant relied upon was both produced at court and also accepted by the Home Office to have been received by them. That argument is not contested before me. In the circumstances I am satisfied that the judge's finding at paragraph 32 is not sustainable on the basis of the evidence at the hearing. I have considered the issue of the materiality of that factual error. Mr Bellara has submitted that in the event that a valid application was outstanding the Respondent's decision would in any event be "not in accordance with the law". That is a submission that I find has little merit bearing in mind jurisprudence to the point that the fact of an outstanding application does not of itself make a subsequent immigration decision unlawful, one only needs to look at cases concerning legacy in order to see the approach of the Tribunal with regard to the second decision. However I am satisfied that the failure to resolve the relevant disputes as to fact is material because it feeds directly into the issue of the status of the Appellant, which is important as a precursor to the assessment of his Article 8 rights. Further in light of the inadequacy of the findings of fact I am not in a position to remake the decision today. Both representatives are of the view, and I agree with them, that in light of the need for the substantial fact finding exercise to be conducted again it is appropriate for the matter to be remitted. It will be for the judge hearing the evidence to decide whether or not a valid application had been made in 2010 and what if any impact that has in the context both of the Appellant's status, and also in terms of his Article 8 rights.

4. I remit the case to the First-tier Tribunal for resolution of the factual disputes between the parties, and a reassessment of the Appellant's position in respect of Article 8 based such a proper consideration of the facts.

Signed Date

Deputy Upper Tribunal Judge Davidge