



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Number  
IA/53456/2013**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9 December 2014**

**Decision and Reasons promulgated  
On 12 December 2014**

**Before**

**Deputy Judge of the Upper Tribunal I. A. Lewis**

**Between**

**Secretary of State for the Home Department**

**Appellant**

**and**

**Abdul Gafur Patel**

(No anonymity order made)

**Respondent**

**Representation**

For the Appellant: Ms. J. Isherwood, Home Office Presenting Officer.  
For the Respondent: Mr. M. Afzal of M A Consultants (London).

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Buckwell promulgated on 22 September 2014, allowing Mr Patel's appeal against the decision of the Secretary of State dated 28 November 2013 to remove him from the UK.
2. Although before me the Secretary of State is the appellant and Mr Patel is the respondent, for the sake of consistency with the

proceedings before the First-tier Tribunal I shall hereafter refer to Mr Patel as the Appellant and the Secretary of State as the Respondent.

### **Background**

3. The Appellant is a national of India born on 23 May 1959. His personal and immigration histories are set out in the determination of the First-tier Tribunal, in particular at paragraphs 1 and 2: it is unnecessary to repeat them in detail here. The following dates are particularly germane: the Appellant arrived in the UK on 14 July 1994; his most recent application, an application “*for indefinite leave to remain in the UK on the basis of continuous residency*” - to quote from the representatives’ letter of 18 March 2013 - was made on 19 March 2013; the application was refused for reasons set out in a ‘reasons for refusal’ letter (‘RFRL’) dated 25 November 2013 and a Notice of Immigration Decision communicating a removal decision was prepared on 28 November 2013 and served on 3 December 2013.
4. The Appellant appealed against the removal decision to the IAC. The First-tier Tribunal Judge allowed the appeal under the Immigration Rules with reference to paragraph 276ADE, and also under Article 8 of the ECHR, for reasons set out in his determination.
5. The Respondent sought permission to appeal to the Upper Tribunal which was granted by First-tier Tribunal Judge Hollingworth on 10 November 2014.

### **Consideration**

6. There was no dispute between the parties that the Appellant met the suitability requirements stipulated in paragraph 276ADE(i) - see determination at paragraph 8. Subparagraphs (iii)-(vi) provide alternative methods of meeting paragraph 276ADE, depending upon age and length of time spent in the UK. The requirement under 276ADE(iii), is that the applicant “*has lived continuously in the UK for at least 20 years (discounting any period of imprisonment)*”.
7. The First-tier Tribunal Judge allowed the appeal under the Rules on the basis that it was uncontested that by the date of the hearing the Appellant had completed a period exceeding 20 years residence in the UK - “*On that basis he satisfied at the date of the hearing the requirements of paragraph 276ADE of HC 395, and succeeds in that regard*” (paragraph 14).

8. The Respondent has challenged that conclusion on the basis that it represents an incomplete reading of paragraph 276ADE, which in its initial sentence states "*The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:*". The Appellant had not completed 20 years residence as of the date of his application on 19 March 2013. It was not until 13 July 2014 that 20 years were completed. In such circumstances the Respondent's decision was in accordance with the Immigration Rules.
9. I accept that submission.
10. In doing so I have had regard to the fact that pursuant to section 85(4) of the Nationality, Immigration and Asylum Act 2002 the Tribunal may consider evidence about any matter which it thinks relevant to the substance of the decision, including evidence which concerns a matter arising after the date of the decision. Although the Appellant has indeed after the date of the Respondent's decision completed 20 years residence in the UK, such a circumstance does not alter the fact that he did not meet the requirements of the Rules, which specify that the period of residence is to have been completed at the date of application.
11. Mr Afzal sought to persuade me that the decisions in **MU ('statement of additional grounds' - long residence - discretion) Bangladesh [2010] UKUT 442 (IAC)** and **Patel [2013] UKSC 72**, were such that the Appellant could avail himself of the post-decision completion of 20 years residence in order to succeed in his appeal against the decision of 28 November 2013 under the Rules.
12. In this context, my attention was directed to the letter of representations dated 26 August 2014 (Appellant's bundle before the First-tier Tribunal at page 3), which requested a reconsideration of the Appellants human rights claim "*on the basis of our client being resident in the UK for over 20 years*", and a Statement of Additional Grounds (pages 4-7) asserting "*I have lived in the UK for over 20 years, I now meet the relevant criteria*".
13. I do not accept that either **MU** or **Patel** provide the assistance that Mr Afzal claims. **MU** was concerned with an earlier version of the so-called 'long residence' rule, which did not stipulate that the relevant period of years required to be met at the date of application. The passages relied upon in **Patel**, at paragraphs 42 and 43, whilst indicating that new information may be dealt with during the course of an appeal, (which finds an echo in section 85(4)), does not in any way alter the express meaning of the relevant Rule herein. More particularly, it does not result in the post-decision fact of the Appellant completing 20 years residence

on 13 July 2014 somehow satisfying the requirement to have completed 20 years residence as of the date of his application on 19 March 2013. The Statement of Additional Grounds and the letter of representations of 26 August 2014 did not constitute a variation of the application made on 19 March 2013 because they post-dated the decision on that application. Even if they had constituted a variation of the application, this would not have altered the date of the application. Furthermore, they did not constitute a new application because the due fee had not been paid. Even if they did constitute such an application there was no relevant decision on that application before the First-tier Tribunal.

14. I pause to note that Mr Afzal stated that he had advanced such submissions before the First-tier Tribunal, and initially suggested that his submissions must have informed the Judge's decision to allow the appeal under the Rules. However, whilst it is apparent that the Judge made some reference to the further representations submitted on 26 August 2014 (determination at paragraphs 7 and 8), it was in due course accepted by Mr Afzal that the Judge did not otherwise indicate in his determination an acceptance of the submissions now relied upon.
15. In the circumstances, accepting as I do the substance of the Respondent's challenge, I conclude that the First-tier Tribunal Judge erred in law in his consideration of the Appellant's appeal under the Rules. This aspect of his decision requires to be set aside. In remaking the decision, only one outcome is possible. The Appellant did not satisfy the Rules at the date of his application, and accordingly the Respondent's decision was in accordance with the Immigration Rules. I remake the decision under the Rules by dismissing that aspect of the Appellant's appeal.
16. The Respondent also sought to challenge the Judge's conclusion under Article 8 of the ECHR, essentially pleading that the Judge had not given adequate reasons for concluding in the Appellant's favour, and that he had essentially based his conclusion on his misconceived approach to the decision under the Rules.
17. The key passage in the First-tier Tribunal's determination in this regard is set out in the following terms at paragraph 15: "*The outcome would turn on proportionality, and in that respect in view of the evidence presented overall, and the satisfaction of the Immigration Rule requirements for indefinite leave to remain, the Respondent would not be entitled to rely upon Article 8(2) ECHR in response to an engagement of Article 8(1) rights. That would be wholly disproportionate in all the circumstances*".
18. I pause to note that the reference to indefinite leave to remain is in error, because the satisfaction of paragraph 276ADE results in

an initial grant of leave not exceeding 30 months: see paragraph 276BE. In my judgement, nothing of significance turns on this particular error in considering the Judge's approach to proportionality.

19. It was common ground before me that in contrast to the appeal under the Rules where the wording of 276ADE focused on the circumstances at the date of the application, the Tribunal was not so constrained in respect of Article 8, and was entitled to have regard to the circumstances as they were at the date of the appeal hearing – by which time the Appellant had indeed completed 20 years residence. It follows that the Judge was correct to observe (save in respect of the requirement of making an application) the Appellant did indeed meet the requirements under the Rules that would secure leave to remain on the basis of private life.
20. The amendments to the Immigration Rules introduced from 9 July 2012, including specifically paragraph 276ADE in respect of private life, and Appendix FM in respect of family life, were expressly introduced to indicate where the Respondent considered the proportionality balance generally lay in Article 8 cases. Given that it is therefore to be taken that the Respondent's position is that it would be proportionate to grant leave to remain to a person meeting the suitability requirements who has resided in the UK for 20 years, I can see no fault in the reasoning, or the conclusion of, the First-tier Tribunal Judge that it would be disproportionate to remove the Appellant in circumstances where he has now obtained. 20 years residence.
21. Accordingly I find no error of law in respect of the decision under Article 8, and that aspect of the decision of the First-tier Tribunal stands.

### **Notice of Decision**

22. The decision of the First-tier Tribunal Judge under the Immigration Rules involved an error of law and is set aside.
23. I remake the decision under the Immigration Rules. Mr Patel's appeal under the Rules is dismissed.
24. The decision of the First-tier Tribunal Judge under Article 8 of the ECHR contained no error of law and stands.
25. Mr Patel's appeal remains allowed on human rights grounds.

**Deputy Judge of the Upper Tribunal I. A. Lewis  
2014**

**10 December**