



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/09404/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 27 May 2015
Prepared 27 May 2015**

**Determination
Promulgated
On 9 June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

Appellant

**MOHAMED AZHAR UDDIN
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr C Avery, Home Office Presenting Officer

For the Respondent: Mr Z Khan, Counsel, instructed by Universal Solicitors

DECISION AND REASONS

1. In this decision the Appellant is referred to as the Secretary of State and the Respondent is referred to as the claimant.
2. The claimant, a national of Pakistan, date of birth 15 October 1964, appealed against the Respondent's decision which is not dated to make

removal directions under Section 10 of the Immigration and Asylum Act 1999. In support of that decision there is a Reasons for Refusal Letter dated 24 October 2014.

3. The appeal, which included significant arguments relating to Article 8 ECHR private/family life rights, came before First-tier Tribunal Judge A Davies (the judge) who, on 10 February 2015, allowed the appeal under paragraph 276ADE of the Immigration Rules on the basis that the Appellant had shown in excess of twenty years continuous residence in the United Kingdom. The judge did not deal with issues relating to the Article 8 claim it would seem, in the light of the finding that the Claimant succeeded under paragraph 276ADE of the Rules. The judge did deal in part with issues relating to legacy cases and they have not been a feature in this appeal.
4. The Secretary of State on 13 February 2015 sought permission to appeal with reference to a single point, namely whether or not the judge had properly assessed the period of unbroken residence or as required, under the Rules, continuous residence of twenty years.
5. It is clear, as the grounds set out, that the Secretary of State was arguing that an intervening period where a sentence of two years had been imposed broke up the continuous residence and therefore the judge had erroneously concluded the requisite period had been met.
6. Permission to appeal was given by First-tier Tribunal Judge Osborne on 26 February 2015.
7. The matter had originally been listed for 18 April 2015 but had been adjourned because of the addition of a recent representation and time was needed for a reply.

8. At that stage, no one had sought either to serve a Respondent's notice or any Appellant's notice in reply on the issue, which had been raised before the judge, that the Claimant did not meet the suitability requirements, particularly SLTR1.4: Where "the presence of the applicant in the UK is not conducive to the public good because they have been convicted of an offence for which they have been sentenced to imprisonment for less than for years but at least twelve months".
9. That was evidently an issue raised with the judge and he stated as follows:

"22. There is also the public interest to consider which is the question of whether it might be not conducive to the public good for him to remain here. The Appellant (Claimant) does have a criminal record for which he received a custodial sentence of less than four years but at least twelve months (two years). However he has not reoffended. He was frank about his conviction in giving evidence. This sentence does not automatically mean that if he remained this would not be conducive to the public good."
10. Mr Avery sought permission, which was not in writing, but no point was taken on that, to amend the grounds to include the issue whether or not the Claimant could succeed under the suitability requirements for paragraph 276ADE. This was not a different issue being raised so much as a matter that had been before the judge and upon which he had purported to make a finding. Mr Khan objected to the amendment on the basis that it was new, only recently made and of which he had no warning. I have some sympathy with Mr Khan's objection but the reality was the point was pursued before the judge, it was not a new point, and it was not leading to a different outcome, that is upon a different basis for refusal, that the proper consideration of whether or not the Claimant met the suitability requirements. In the circumstances I decided de bene esse that it was appropriate to hear argument on that matter.

11. Mr Khan through his careful research was able to show that continuous residence is not broken by the intervention of a period of imprisonment. Accordingly with reference to the wording of paragraphs 276A and 276ADE(1)(iv) the Claimant's period of imprisonment did not exclude him from having the twenty years continuous period: Twenty years was left, out of the total period he had been in the United Kingdom after excluding the period of imprisonment.
12. In the circumstances the Secretary of State's guidance on Appendix FM (paragraphs 8.2.3.1 and 8.2.3.5) made it clear that the Secretary of State regarded in terms of private life issues raised in the United Kingdom, that continuous residence would not be broken if they had spent time in prison because time in imprisonment will not be counted towards the period of residence. The time before and after imprisonment can be aggregated to make up the full amount of time. There was no issue pursued before me that as a fact if the time before and after imprisonment was added up, it did not exceed the required twenty year period.
13. Accordingly, Mr Khan's argument defeated the original grounds as drafted by the Secretary of State.
14. Mr Avery produced a copy of the decision of the Upper Tribunal in Bossadi (paragraph 276ADE; suitability; ties) [2015] UKUT 42 (IAC).
15. The case established that the suitability requirements bear on a person's eligibility to claim under paragraph 276ADE. In particular SLTR1.4. noted "the presence of the applicant in the UK is not conducive to the public good because they have been convicted of an offence for which they have been sentenced to imprisonment for less than four years but at least twelve months."
16. As recited above, it is clear the judge's finding at paragraph 22 misunderstood the relevance of paragraph SLTR1.4. In the circumstances

that was an error of law which was material to the remedy and relief that was being sought. Accordingly I decided to allow Mr Avery's amendment of the grounds.

17. As a result of further submissions it became apparent to me that the judge never addressed at all Article 8 ECHR considerations both in terms of the Appellant's moral and physical integrity but also in relation to his private/family life rights being exercised in the United Kingdom. This was an obvious point clearly and extensively raised in the grounds of appeal to the First-tier Tribunal which it would seem was noted in part by the judge in the decision at paragraph 5.
18. In the circumstances it seemed to me that the fair and just disposal of the appeal required that the matter of the Article 8 claim be returned to the First-tier Tribunal to be determined.
19. As such I find the Original Tribunal made no error of law in relation to the original grounds seeking permission but the judge had made a material error of law in seeking to exclude the application of SLTR1.4.
20. Accordingly I find the matter must be remitted to the First-tier Tribunal solely on the issue of the Claimant's claim based on private/family life rights outside of the Immigration Rules because clearly this is one of those cases where the Claimant falling outside the Rules still ought to have a claim based on those rights assessed.

NOTICE OF DECISION

The appeal of the Secretary of State is dismissed under the Immigration Rules in respect of the calculation of twenty years' continuous residence.

The Secretary of State's appeal is allowed under the Immigration Rules in the proper application of SLTR1.4 Appendix FM.

The case is remitted to the First-tier Tribunal to determine the Article 8 ECHR claim

No anonymity direction is made.

Signed

Date: 1 June 2015

Deputy Upper Tribunal Judge Davey