



IAC-FH-CK-V1

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

Appeal Number: IA/13968/2014

THE IMMIGRATION ACTS

Heard at Field House

**Decision and Reasons
Promulgated**

On 10 September 2015

On 11 November 2015

Prepared 10 September 2015

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

PRAKASH CHHETRI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Bond, of Counsel instructed by Paul John & Co Solicitors

For the Respondent: Mr K Norton, Senior Home Office Presenting Officer

DECISION and DIRECTIONS

1. The appellant appeals against a decision of Judge of the First-tier Tribunal Thew, who in a determination promulgated on 28 November 2014 dismissed his appeal against a decision of the Secretary of State to refuse to grant him indefinite leave to remain under the provisions of paragraph 276B of HC 395.
2. The appellant had entered Britain on 21 October 2004 and the application for leave to remain was made on 1 October 2013. That had been varied

on 4 February 2014 when it was asserted that he had lived in Britain for ten years.

3. The application was refused on the basis that he had had lawful leave to remain following his arrival in Britain until 27 June 2011 but had not submitted an application for further leave until 12 August 2011 and although his leave had been further granted on 3 October 2011 the time between 28 June 2011 and 2 October 2011, a period of approximately three months and four days was such that his continuous lawful residence had been broken. He had remained in Britain in breach of the immigration laws in excess of 28 days and therefore could not satisfy the requirements of paragraph 276B(v).
4. It was not considered that there were any other factors which should mean that the respondent should exercise her discretion in the appellant's favour.
5. Having heard evidence from the appellant the judge set out, in paragraph 13, a detailed analysis of the appellant's immigration history in Britain.
6. She then pointed out that the appellant had not lived in Britain for ten years at the time of the second application nor indeed had he been resident in Britain for ten years at the time the decision had been made on 10 March 2014 and therefore at the date of decision he had only been in Britain for nine years and five months and therefore did not meet the requirements of paragraph 276B.
7. She noted the assertion that his leave to remain had been extended by virtue of Section 3C of the Immigration Act 1971 and that as this was not a PBS appeal the Tribunal was not precluded from taking into account the appellant's leave to remain extended by Section 3C.
8. In paragraph 16 of the determination the judge referred to the determination in **AQ (Pakistan) [2011] EWCA Civ 833** and contrasted that Court of Appeal judgment with the determination of the Upper Tribunal in **MU ('Statement of Additional Grounds'; long residence; discretion) Bangladesh [2010] UKUT 442 (IAC)**. She stated that the judgment in **AQ (Pakistan)** would not permit an argument to be put forward that the appellant could meet the requirements of the Rules and that therefore **MU** must now be regarded as wrongly decided. She then went on to consider the issue of the appellant's rights under Article 8 of the ECHR.
9. Permission to appeal was granted on the basis that the judge had incorrectly stated that **MU** had been wrongly decided.
10. When the matter first came before me, sitting with Lord Matthews, Ms Bond raised the issue as to whether or not it had been conceded at the time of the first hearing that there were good reasons why the period when the appellant had not had leave should be discounted - he had been

given leave in accordance with his CAS but it had not covered the period after the end of the course and before the results were issued. This matter had been put to the Secretary of State, who had then maintained the decision to grant leave only until shortly after the appellant's course had ended and not until after the results had been produced. She stated that she understood from Mr Nicholson that the Presenting Officer at the appeal had conceded that point. She asked for an adjournment to enable her to obtain written confirmation of this from Mr Nicholson.

11. The matter then came back before me. Ms Bond did not have any confirmation from Mr Nicholson regarding any concession made but stated that she was still waiting for Mr Nicholson's written confirmation of the position.
12. The appeal was then adjourned further. When it came back before me Ms Bond stated that she had now heard from Mr Nicholson, who had made it clear that the facts as to what had happened when the appellant's leave had not been extended had been agreed but there had been no further concession.
13. She and Mr Norton drew my attention to the relevant IDIs regarding what periods should or should not be ignored when considering the continuation of leave to remain leading to the grant of indefinite leave to remain on long residence grounds.
14. Mr Norton in reply accepted that the judge had made no clear finding on that issue but also accepted that the judge had been wrong to state that the judgment in **AQ (Pakistan)** meant that the decision in **MU (Bangladesh)** was no longer valid.
15. It was therefore agreed that the appeal should be remitted to the First-tier Tribunal for further consideration – such consideration now taking into account the up-to-date position regarding the appellant's rights under Article 8 of the ECHR.
16. I consider that the requirements of the Senior President of the Tribunal's Practice Directions are met and I therefore direct that this appeal be remitted to a hearing in the First-tier Tribunal for a hearing afresh.

Notice of Decision

This appeal is remitted to a hearing afresh at Taylor House.

Directions

Time estimate two hours. No interpreter.

Signed

Date

Upper Tribunal Judge McGeachy

