



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

Appeal Number: IA/22027/2014  
IA/22092/2014  
IA/22103/2014

**THE IMMIGRATION ACTS**

**Heard at UT (IAC) Birmingham  
On 8<sup>th</sup> September 2015**

**Decision & Reasons Promulgated  
On 21<sup>st</sup> September 2015**

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**MUHAMMAD SAJJAD  
MAHREEN AKHTER  
SAMEEN SAJJAD**

**Appellant**

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Mr S Jassab, counsel, instructed by Law Lane Solicitors  
For the Respondent: Mr I Richards, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The second and third appellants (wife and daughter) are dependant upon the first appellant. I shall be considering the first appellant's appeal in this determination, his wife and daughter's appeal standing or falling with his.
2. Permission to appeal was granted by the First-tier Tribunal but it is difficult to understand what the First-tier Tribunal judge meant by the terms of grant.

3. The grounds seeking permission, dated 5<sup>th</sup> April 2015, assert:

“The FTTJ arguably erred in failing to consider the fact that the Appellant completed his five years as an exempt official/overseas government employee in November 2013 and the only reason he could not make an application for Indefinite leave to remain soon after the completion for his five years was that he was still exempt official and was not entitled to make an application as per IDI Chapter 14 Section 1 (*please see the attached*). The Appellant was only entitled to make an application for further leave to remain after he ceased to be exempt from the Immigration Control. In November 2013, the Appellant was still required by the Pakistani High Commission and would have succeeded in his application, had he not followed the respondent’s IDIs. The Appellant was unfortunate that the Pakistani High Commission had to outsource the services he was providing to them. The services he was providing in the Pakistani High Commission and in Gerry’s Offshore Incorporation Ltd were exactly the same. The purpose of those services was also the same and these circumstances it was appropriate for the FTTJ to find the Appellant is still required for his job in the UK and therefore he met the requirements of Para 167.”

### **Background**

4. The appellant had applied for indefinite leave to remain in the UK on 7<sup>th</sup> February 2014 as an Overseas Government Employee, having entered the UK with such entry clearance on 23<sup>rd</sup> November 2008. That application was refused because the appellant could not meet the relevant criteria set out in paragraph 167 Immigration Rules: in particular he could not show that he remained employed by the Pakistani High Commission and was still required for that employment, as certified by the High Commission.
5. The appellant had ceased working for the High Commission on 15<sup>th</sup> January 2014 as set out in the High Commission letter dated 21<sup>st</sup> January 2014 which was attached to his application for indefinite leave to remain.

### **Error of Law**

6. It seems that the appellant is arguing firstly that he had understood the guidance issued by the respondent for exempt migrants to mean that he could not apply for indefinite leave to remain whilst he was employed at the High Commission and secondly that Gerry’s Offshore Incorporation Ltd (“Gerry’s”) was the same as the High Commission or at the very least he was carrying out the same work and therefore should be treated as the same.
7. In his oral evidence before the First-tier Tribunal, as recorded by the First-tier Tribunal Judge and not the subject of challenge in the proceedings before me, the appellant said that he had been contacted by Gerry’s prior to his employment with the High Commission coming to an end and that after his employment ended he had contacted them and they had employed him. He

described Gerry's as being 'semi-dependant' upon the High Commission. There was no evidence that Gerry's was a branch or 'arm' of the High Commission.

8. The First-tier Tribunal judge found that the appellant could not meet the specific requirement of the Immigration Rules that the appellant continue to be employed by the High Commission and was still required for that employment. Gerry's is not the High Commission. It is plain that the judge made the correct finding on the evidence before him: the appellant was not employed by the High Commission either at the date of application or the date of decision and nor was he required for employment by the High Commission. There is no error of law in that finding.
9. Although Mr Jassab argued that the decision was a breach of the Immigration Rules he was unable to direct me to any applicable Rule save for paragraph 128A which he submitted could apply in the case of this appellant because he had been in the UK lawfully for a period of more than four years. He referred to the guidance issued by the respondent which states that if a person is exempt from Immigration Control then they cannot be in the UK unlawfully and thus any period of time spent in the UK whilst exempt was lawful. Paragraph 128A, 128 and 134 of the Immigration Rules reads as follows, as submitted by Mr Jassab as relevant to this appellant:

**'General requirements for indefinite leave to remain**

128A. For the purposes of references in this Part to requirements for indefinite leave to remain:

(a) "continuous period of 5 years or 4 years lawfully in the UK" means, subject to paragraph (aa), residence in the United Kingdom for an unbroken period with valid leave, and for these purposes a period shall not be considered to have been broken where:

(i) the applicant has been absent from the UK for a period of 180 days or less in any of the five consecutive 12 calendar month periods (or four consecutive 12 calendar month periods where the applicant received a Highly Skilled Migrant Programme approval letter issued on the basis of an application made before 3 April 2006, and was subsequently granted entry clearance or leave to remain on the basis of that letter) preceding the date of the application for indefinite leave to remain; and

(ii) the applicant has existing limited leave to enter or remain upon their departure and return, except that where that leave expired no more than 28 days prior to a further application for entry clearance, that period and any period pending the determination of that application shall be disregarded; and

(iii) the applicant has any period of overstaying between periods of entry clearance, leave to enter or leave to remain of up to 28 days and any period of overstaying pending the determination of an application made within that 28 day period disregarded.

(aa) ...

(b) Except for periods when the applicant had leave as a highly skilled migrant, a self-employed lawyer, a writer, composer or artist, an innovator or on the grounds of his UK Ancestry, and subject to paragraph (ba):

(ba) ...

(i) the applicant must have been employed in the UK continuously throughout the five years, under the terms of his work permit or in the employment for which he was given leave to enter or remain, except that any breaks in employment in which he applied for leave as a work permit holder or as an employee under any provision of this section to work for a new employer shall be disregarded provided this is within 60 days of the end of his employment with his previous employer.

(ii) any absences from the UK must have been for a purpose that is consistent with the continuous permitted employment in (i), including paid annual leave or for serious or compelling reasons.

**Requirements for leave to enter the United Kingdom for work permit employment**

128. A person coming to the UK to seek or take employment must be otherwise eligible for admission under these Rules or eligible for admission as a seaman under contract to join a ship due to leave British waters. The requirements for applications for work permit employment set out in paragraphs 128 to 133 of these Rules were deleted on 6 April 2012 by Statement of Changes HC 1888 except insofar as relevant to paragraphs 134 to 135.

**Indefinite leave to remain for a work permit holder**

134. Indefinite leave to remain may be granted on application provided the applicant:

(i) has spent a continuous period of 5 years lawfully in the UK, of which the most recent period must have been spent with leave as a work permit holder (under paragraphs 128 to 133 of these rules), and the remainder must be any combination of leave as a work permit holder or leave as a highly skilled migrant (under paragraphs 135A to 135F of these rules) or leave as a self-employed lawyer (under the concession that appeared in Chapter 6, Section 1 Annex D of the Immigration Directorate Instructions), or leave as a writer, composer or artist (under paragraphs 232 to 237 of these rules);

(ii) has met the requirements of paragraph 128(i) to (v) throughout their leave as a work permit holder, and has met the requirements of paragraph 135G(ii) throughout any leave as a highly skilled migrant;

(iii) is still required for the employment in question, as certified by the employer; and

(iv) provides certification from the employer that the applicant is paid at or above the appropriate rate for the job as stated in the Codes of Practice in Appendix J, or where the applicant is on maternity, paternity or adoption leave at the time of the application and not being paid the appropriate rate, the date that leave started and that they were paid at the appropriate rate immediately before the start of that leave.

(v) provides the specified documents in paragraph 134-SD to evidence the employer's certification in sub-section (iv), and the reason for the absences set out in paragraph 128A, and

(vi) has demonstrated sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, in accordance with Appendix KoLL; and

(vii) does not fall for refusal under the general grounds for refusal; and

(viii) must not be in the UK in breach of immigration laws except that any period of overstaying for a period of 28 days or less will be disregarded.'

10. There are two difficulties with this submission. First it did not form any part of the application or the appeal before the First-tier Tribunal and secondly it had not been cited as a ground of appeal and no application had been made to amend the grounds of appeal. In so far as Mr Jassab sought to amend his ground of appeal I refused that application because there had been no notice of such application to the respondent and this issue had not been raised in any way at all either to the respondent in the application or in the appeal to the First-tier Tribunal. In any event, it can be seen that even if that ground had been argued, the appellant did not meet those Rules – he had not been given leave to enter as a work permit holder or other category enabling work within the Rules – he was exempt from control and in any event his employer no longer employed or required him.
11. It cannot be an error of law for the First-tier Tribunal judge to fail to consider in dealing with an appeal, an application that was never made, a decision that was never made and a submission that was never made.
12. In so far as the submission in the grounds that the appellant had misunderstood the guidance and thought he could only apply for indefinite leave after he had left the employment of the High Commission, it is difficult to see how he could have misunderstood the guidance, particularly as he had legal advisors and his application was submitted by them on his behalf. The appellant made an application after his employment with the High Commission ceased. Even if that application had been made prior to the expiry of his employment with the High Commission it is difficult to see how the outcome would have been any different. There is no entitlement to indefinite leave to remain merely because of five years lawful residence; an application for indefinite leave to remain would

be considered only after the person ceases to be exempt and then in accordance with the normal immigration Rules. The application made does not identify how the appellant would or could have met the normal immigration rules for settlement after five years lawful residence. The First-tier Tribunal judge considered the appellant's and his family's application in accordance with the relevant immigration rules and under Article 8. There has been no challenge to the First-tier Tribunal judge's findings on the Article 8 grounds of appeal. There is no identifiable error of law.

13. There is no error of law by the First-tier Tribunal.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision

The decision of the First-tier Tribunal stands.

Date 18<sup>th</sup> September 2015

Upper Tribunal Judge Coker