



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

**Appeal number: IA/45613/2014**

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On October 12, 2015**

**Decision and Reasons  
Promulgated  
On October 13, 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**MR MUHAMMAD FALAK SHER  
(NO ANONYMITY DIRECTION)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation:

Appellant

Miss Hashmi (Legal (Representative))

Respondent

Mr Harrison (Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. The appellant is a national of Pakistan. The background to this case is that the appellant entered the United Kingdom legally as a student on June 20, 2004 initially with leave until July 22, 2005. That leave was extended on four subsequent occasions until May 31, 2009 and then he was granted leave to remain as a Tier 4 student until August 4, 2010. He then applied for leave to remain as a Tier 1 (Post study work) migrant and this enabled him to remain in the United Kingdom until August 13, 2012.

2. He made two failed attempts to remain as a Tier one entrepreneur migrant on August 13, 2012 and September 29, 2012. These were both rejected on September 18, 2012 and March 25, 2013 respectively.
3. The first application was rejected due to non-payment of a fee and the second application was rejected with no right of appeal. A failed judicial review challenge was made and on December 6, 2013 he made his third and final application to remain as a Tier 1 entrepreneur but this was also refused on May 6, 2014 with no right of appeal.
4. On June 23, 2014 he made an application for indefinite leave to remain on the basis of ten-years lawful residence but this was refused by the respondent on October 16, 2014. He appealed that decision on November 12, 2014 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
5. The matter was heard by Judge of the First-tier Tribunal Levin on January 26, 2015 and in a decision promulgated on February 6, 2015 he refused his appeal under the Immigration Rules and article 8 ECHR.
6. The appellant applied for permission to appeal on February 19, 2015 submitting the Tribunal had erred. Permission to appeal was granted by Judge of the First-tier Tribunal levins on April 9, 2015 only on the basis that it was not clear if the Tribunal had considered the application under article 8 ECHR.
7. The respondent filed a Rule 24 response on May 6, 2015 maintaining there was no error in law.

### **ERROR OF LAW SUBMISSIONS**

8. Miss Hashmi relied on the grounds of appeal and initially sought to argue that the Tribunal had erred in its approach to paragraph 276B HC 395. She thereafter addressed me on the possible error of law identified in the permission to appeal. She submitted that the Tribunal had failed to have regard to the medication he was taking or attach sufficient weighted to the fact that he had lived here since 2004 and had not been reliant on the state and spoke excellent English. She submitted that the appellant's removal was not proportionate because he would face difficulties on return because he had no family.
9. Mr Harrison relied on the rule 24 response and submitted that all findings made by the Tribunal were open to it. The decision was a carefully prepared and a written decision. The appellant's leave had expired in September 2012 when his application to remain was refused. The Tribunal had regard to why he came here in the first place and was fully aware that he spoke excellent English and had obtained excellent academic qualifications. These were factors that the Tribunal considered in an article 8 assessment. Whilst the Tribunal has suggested that the Immigration Rules were a complete code it went on to consider all the relevant law and

facts before finding removal would not be disproportionate. The issue relating to the appellant's medical condition was not something that was raised at the original hearing and in any event there was no medical evidence to suggest that his ailments could not be treated in Pakistan.

### **DISCUSSION**

10. I raised with Miss Hashmi why she was arguing that the appellant had been here lawfully when both the first Tier Tribunal and the Judge who granted permission had both found this not to be the case. I indicated to her that that issue was closed and that the Tribunal had found he had not satisfied the requirements of paragraph 276B HC 395 and the only issue for me to consider was whether the Tribunal had erred when making reference to paragraph 276B and 276ADE HC 395 being a complete code.
11. Whilst the Tribunal had referred to the Rules as being a complete code in paragraph [30] it was clear that the Tribunal from paragraph [25] until paragraph [33] had considered this case under article 8 ECHR.
12. The Tribunal had had regard to section 117B of the 2002 Act and had taken into account positive points made on the appellant's behalf. However, the Tribunal was entitled to find the appellant's immigration history together with the fact that his private life was created when his immigration status was either unlawful or precarious outweighed anything put forward on his behalf.
13. There was no medical evidence to suggest that he could not receive treatment for his various ailments in Pakistan. The Tribunal had rejected his claim that he had no family and noted that up until he was prevented from leaving the United Kingdom he had visited Pakistan on three occasions most recently in December 2011.
14. The Tribunal's findings were clearly open to it. It was unfortunate that there was a reference to a complete code but to be fair to the Judge of the First-tier Tribunal that argument was commonly advanced at the time he heard the evidence. In any event and importantly, he went on to consider the appellant's claim under article 8 and dismissed it with valid reasons.
15. There is no merit to this appeal and I dismissed it.

### **DECISION**

16. There was no material error. I uphold the original decision.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT  
FEE AWARD**

I make no fee award as the appeal has been dismissed.

Signed:

Dated:

A handwritten signature in black ink, appearing to read "SPAL" with a flourish underneath.

Deputy Upper Tribunal Judge Alis