



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

Appeal Number: IA/50957/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 3 August 2015**

**Promulgated**

**On 4 September 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J M LEWIS**

**Between**

**SUFFIAN UMAR**  
(ANONYMITY DIRECTION NOT MADE)

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Miss S Haji, Counsel instructed by Marks & Marks Solicitors  
For the Respondent: Mr T Melvin, Home Office Presenting Officer

**DECISION AND REASONS**

**The History of the Appeal**

1. The Appellant, a citizen of Pakistan, who had been granted leave to remain in the United Kingdom as a Tier 1 Highly Skilled (General) Migrant, sought indefinite leave to remain. His application was refused. His ensuing appeal was heard by Judge Del Fabbro sitting at Taylor House on 11

August 2014. Both parties were represented. In a decision of 28 August 2014 the appeal was allowed under the Immigration Rules.

2. The Respondent sought permission to appeal. As subsequently expanded by procedural directions, this was granted on 20 October 2014 by Judge Cruthers in the following terms:

- “1. By a determination promulgated on 9 September 2014, First-tier Tribunal Judge Del Fabbro allowed these appeals ‘to the extent that the refusal on general grounds was wrong in law’ (page 5 of the determination). The judge arrived at that result because the respondent had not considered the general attributes criteria for indefinite leave to remain as a Tier 1 Highly Skilled General Migrant but had instead relied just on Part 9 of the immigration rules, HC395 (specifically, paragraph 322(1C)(iv)). It was the judge’s assessment that the respondent had not made out her case pursuant to Part 9. (The second appellant is the dependent spouse of the first appellant – paragraph 1 of the determination).

2. The first contention in the grounds on which the respondent seeks permission to appeal (paragraphs 2 to 7) is that the first appellant had admitted an offence within the 24 months preceding his application and so ‘fell squarely within the provisions of paragraph 322(1C)(iv)’. Secondly, at paragraphs 8 to 13 of the grounds, the respondent argues that what the judge referred to as the ‘principle (sic) issue’ (paragraph 10 of the determination refers) could have been resolved if the judge had granted the 2-3 hour adjournment sought by the respondent’s counsel at the hearing on 11 August 2014.

3. The grounds are arguable.”

3. The Appellant attended the error of law hearing, which took the form of submissions. I have taken these into account, together with the skeleton argument of the Respondent. I reserved my decision.

## **Decision**

4. A print of PNC identification details states that on 8 June 2012 the Appellant received a reprimand/warning/caution for one offence against the person, namely battery, under Section 39 of the Criminal Justice Act 1988.

5. On that basis, the decision of the Respondent was based in part upon paragraph 322(1C)(iv) of the Immigration Rules. Entitled “Grounds on which leave to remain and variation of leave to enter or remain in the United Kingdom are to be refused”, this reads:

“(1C) where the person is seeking indefinite leave to remain to enter or remain:

...

(iv) they have, within the 24 months prior to the date on which the application is decided, been convicted of or admitted an offence for which they have received a non-custodial sentence or other out of court disposal that is recorded on their criminal record.”

6. A document headed “Basic Disclosure – Criminal conviction certificate issued under Section 112 of the Police Act 1997” in Scotland, relating to the Appellant, reads:

“All basic disclosure certificates are issued under section 112 of the Police Act 1997. A certificate either contains information about every conviction of an applicant or states that there is no such conviction. Conviction takes its meaning from the Rehabilitation of Offenders Act 1974, but it does not include any spent conviction. The Rehabilitation of Offenders Act 1974 sets out rehabilitation periods after which convictions may become spent; different rehabilitation periods apply in England and Wales and in Scotland.

...

#### Convictions

The applicant has no convictions for disclosure.”

7. Guidance on spent and unspent convictions under the 1974 Act, at pages 29 and 30 of the Appellant’s bundle, state that cautions, warnings and reprimands are spent as soon as they are issued, and that conditional cautions are spent as soon as the conditions end.
8. The judge recognised that, by accepting a caution from the police, the Appellant had admitted an offence. He treated the caution as an “out of court disposal”. He discussed at paragraph 14 the meaning of an offence being “recorded on their criminal record”. He found that the burden lay upon the Respondent to establish that a caution was recorded on the Appellant’s criminal record, and that this burden had not been discharged. He was correct to do so. The caution was immediately spent, and thus did not require disclosure, and the basic disclosure certificate stated that the applicant had no convictions for disclosure. Thus the caution was not in law recorded on the Appellant’s criminal record.
9. The second ground of application for permission to appeal was that the judge had been wrong to decline the request by the Respondent for an adjournment of an estimated two or three hours in order to ascertain the nature of the caution and whether it was recorded. The judge declined this application, recording at paragraph 10 his reasons, which were essentially that the Respondent had had ample opportunity to obtain this evidence, which was in any event unlikely to advance the issue. This reasoning was properly open to the judge. The decision to grant or not an application for an adjournment is a discretion to be exercised on judicial

principles. The judge so exercised it, and did not, I find, err in law in so doing.

10. The determination does not reflect any error of law, and is therefore upheld. Since it remitted the matter to the Respondent for reconsideration, the application awaits a fresh decision.

### **Notice of Decision**

11. The original decision does not contain any error of law, and is upheld.
12. No anonymity direction is made.

Signed  
August 2015

Dated: 4

Deputy Upper Tribunal Judge J M Lewis