



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

Appeal Number: IA/40094/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22 December 2015**

**Decision & Reasons Promulgated  
On 5 January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**HAMID MANZOOR ABBASI  
(No anonymity order made)**

Appellants

**and**

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

Respondent

**Representation**

For the Appellant: Mr A. Gondal, instructed by Berkshire Law Chamber  
For the Respondent: Mr T. Melvin, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This appeal arises from a decision by the respondent to refuse the appellant's application for indefinite leave to remain on the basis of length of residence. The ensuing appeal was heard by First-tier Tribunal ("FtT") Judge Hembrough who, in a decision promulgated on 21 April 2015, dismissed the appeal under both the Immigration Rules and Article 8 ECHR.
2. The factual background, as accepted by the FtT, is that the appellant, who is a citizen of Pakistan born on 9 July 1949, came to the UK in 1974 as a

visitor and thereafter used a false name to obtain a national insurance number. He worked unlawfully for several years before returning to Pakistan. He then visited the UK on several occasions, using his real name. On 11 August 1989 he entered the UK as a visitor using his real name and began working again under the false name and national insurance number he had used previously. He has remained in the UK continuously since then. Between 1989 and 1993 he worked but since 1993 has not done so and has been claiming benefits. He has had, since 1993, disabilities that prevent him working, most significantly vision problems, having lost one eye and suffered deterioration in the other.

3. The respondent did not accept the appellant and his alias were the same person and rejected the application on the basis that the appellant was unable to demonstrate continuous residence for the requisite period.

#### Decision of FtT

4. The FtT considered the appellant to be a credible witness and accepted his evidence that he and the alias were the same person such that he had been in the UK for several years in the 1970s and then continuously since 1989. The FtT found that the appellant could not satisfy paragraph 276B of the Immigration Rules because he had not been lawfully resident in the UK for ten years. The judge then turned to Paragraph 276ADE.

5. Paragraph 276ADE states in relevant part:

276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:

- (i) does not fall for refusal under any of the grounds in Section S-LTR 1.2 to S-LTR 2.3. and S-LTR.3.1. in Appendix FM; and
- (ii) has made a valid application for leave to remain on the grounds of private life in the UK; and
- (iii) has lived continuously in the UK for at least 20 years (discounting any period of imprisonment);

The relevant paragraphs under Section S-LTR in Appendix FM stipulate:

S-LTR.1.1. The applicant will be refused limited leave to remain on grounds of suitability if any of paragraphs S-LTR.1.2. to 1.7. apply.

...

S-LTR.1.6. The presence of the applicant in the UK is not conducive to the public good because their conduct (including convictions which do not fall within paragraphs S-LTR.1.3. to 1.5.), character, associations, or other reasons, make it undesirable to allow them to remain in the UK.

6. The FtT found that the appellant met the 20 years continuous residence requirement under Paragraph 276ADE(1)(iii) but that he fell for refusal

under S-LTR 1.6. The FtT's reason for this finding was that the appellant had, for over twenty years, been in receipt of public funds in the form of Disability Living Allowance, Housing Benefit and Council Tax Benefit to which he was not entitled and which he obtained by deception. The FtT also commented that the appellant's bank statements showed he had been using some of the public funds for gambling. In reaching its decision the FtT referred to, and distinguished, *ZH (Bangladesh) v SSHD* [2009] EWCA Civ 9 where the Court of Appeal found that working illegally and evading detection (including through the use of a false identity) should not be a factor counting against an appellant who was seeking leave under the 14 year continuous residence test then in force. The FtT stated, at paragraph [37], that it did not consider working illegally can be equated to defrauding the DWP (and the British taxpayer) out of thousands of pounds in public funds.

7. The FtT briefly considered the appeal under Article 8 outside the Rules. It accepted that the appellant had established a private life but found that despite his age, poor health and length of residence, having regard to Section 117A-D of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"), removal to Pakistan would be proportionate.

#### Grounds of appeal

8. The grounds of appeal are divided into two parts. The opening paragraph of the grounds states: "*Grounds B-I are written by counsel in response to the FtT's decision to refuse permission. Grounds J-O are written by the appellant*"
9. Grounds J-O, which are said to be written by the appellant rather than Counsel (although which are written in the same style as grounds B-I), raise the issue of whether the appellant received a fair trial. The appellant submits that he was essentially prevented from taking part in the hearing because the judge had made up his mind before hearing any evidence. The grounds state that when the judge entered the court the first thing he said was "Good morning. Do you know that you have been claiming benefits illegally and you could be prosecuted for this" and that he said to the Home Office representative "I'm sure you will notify the relevant authorities." The grounds also state that the judge told the appellant he sat on the Benefits Tribunal.
10. Grounds B-I argue, in sum, that:
  - a. the FtT failed to take into consideration that the appellant would be destitute if returned to Pakistan as he would be unable to work and would not have accommodation or support, and would face an early death.
  - b. the FtT failed to recognise the extent of the appellant's private life in the UK and that he had spent a total of 30 years in the UK
  - c. the FtT erred in its consideration of S-LTR 1.6, by finding the appellant opted to claim benefits and could have returned to Pakistan

when his medical condition was such that he had no choice and remained in the UK out of necessity to survive.

11. Permission to appeal was granted by the Upper Tribunal on the following basis:

“Given that the point concerning the appellant’s conduct was not raised or relied upon by the Secretary of State in the decision letter, it is arguable that it may have given rise to unfairness to amount to an error of law.”

### Consideration

12. The appellant alleges that at the commencement of the hearing FtT Judge Hembrough told him that he was liable to be prosecuted and the respondent should notify the authorities. A comment of this nature, stated in way described by the appellant, and made at the outset of the hearing before any evidence had been heard, may well have resulted in a fair minded observer concluding there was a real possibility of the tribunal being biased such that an issue of procedural unfairness affecting the appellant’s right to a fair hearing could be said to arise.
13. However, no evidence has been put forward to substantiate the allegation. The appellant was represented in the FtT (but not before me) by Mr Rahman. Mr Rahman also drafted the grounds of appeal. However, Mr Rahman did not prepare a witness statement attesting to the purported statement by the judge. On the contrary, in an unusual approach to drafting grounds of appeal, he seems to have disassociated himself from the allegations by explicitly stating in the grounds that those pertaining to the allegations of impropriety were not drafted by him.
14. I was unable to glean any help from a review of the judge’s record of proceedings or otherwise from the file. I asked Mr Melvin if there were any notes or records on his file relating to the conduct of the judge and he told me there were none.
15. It is apparent from the decision that the judge raised the issue of benefits and questioned the appellant about this (at paragraph [19] the judge stated that the appellant said he had been in receipt of benefits to which he was not entitled “in response to my question in that regard”). It also appears that the judge may have raised with the appellant that he was liable to prosecution and with the respondent that the appellant should be reported (at paragraph [34] the judge stated “he accepted that his conduct might render him liable to prosecution and I trust that the respondent will make the relevant authorities aware of the circumstances of this case in order that appropriate consideration can be given to such a course”).
16. Reading the decision and appellant’s grounds of appeal as a whole, and considering the matter in the round, it is apparent that the appellant was upset and concerned by the issue of his claiming benefits unlawfully being considered by the Tribunal and that he felt the judge was biased against

him because he focused on, and clearly attached significant weight to, this issue. However, there was nothing improper about the judge raising the matter or its implications, as described in paragraphs [19] and [34] of the decision. Whilst I would consider it improper for a judge to tell an appellant he was liable for prosecution and should be notified to the authorities before hearing any evidence, I am not satisfied, based on the evidence before me, that this is what occurred and I find that the challenge based on apparent bias and unfairness is unable to succeed.

17. A further issue of fairness, that was raised in the grant of permission to appeal and expanded on by Mr Gondal before me, was that the FtT's decision was based on an issue that was not raised by the respondent. The respondent refused the appellant's application for leave to remain on the basis he did not satisfy Paragraph 276ADE(1)(iii) without making any reference to the requirements under S-LTR. The FtT, however, dismissed the appeal under S-LTR 1.6.
18. Mr Melvin argued that it cannot realistically be argued that it would come as a surprise to the appellant that his conduct with regard to benefits would be at issue before the FtT. Nor can it be regarded as unfair for a judge to apply the relevant Immigration Rules.
19. I agree with Mr Melvin. The appellant's case before the FtT was that he satisfied the requirements for leave to remain on the grounds of private life under Paragraph 276ADE(1). For him to succeed under 276ADE(1) he needed to satisfy both 276ADE(1)(i) (requiring certain suitability conditions to be met including that specified in S-LTR 1.6) and 276ADE(1)(iii) (requiring him to have lived continuously in the UK for 20 years).
20. The respondent found the appellant did not satisfy 276ADE(1)(iii). Having so found, it was not necessary to go on to consider 276ADE(1)(i). However, the FtT found that the appellant did satisfy 276ADE(1)(iii). This meant that it was required to go on to consider 276ADE(1)(i). There is no error of law in the judge proceeding to do so (on the contrary, to not consider 276ADE(1)(i) would have been an error of law). Nor was there unfairness to the appellant whose representative should have appreciated that if the appellant succeeded in his argument about 276ADE(1)(iii) the judge would need to consider 276ADE(1)(i) and that such consideration would take into account the unlawful receipt of benefits by the appellant.
21. I now turn to the appellant's argument that S-LTR1.6 was misapplied because the FtT failed to recognise that the appellant stopped working and claimed benefits because of medical necessity and not by choice.
22. The issue for the FtT was whether, under S-LTR1.6, the presence of the appellant in the UK is not conducive to the public good such that it would be undesirable to allow him to remain in the UK given he has been in receipt of benefits unlawfully, through use of an alias, for about 20 years.

23. Mr Gondal sought to rely on *ZH (Bangladesh)* to argue that the judge took too strict an approach to S-LTR 1.6 which effectively defeated the purpose of 276ADE. In *ZH (Bangladesh)*, the appellant entered the UK on a visitor's visa and thereafter worked unlawfully (without a National Insurance Number and not paying tax or National Insurance). He also, on one occasion, used an alias. The Court of Appeal found that the use of a false identity and working illegally (including not paying tax) was not a sufficient basis to deny the appellant's application as that would defeat the purpose of the rule, which was to give someone who has met the length of residence requirement, even whilst in the UK unlawfully, a right to remain so long as it was not undesirable in the public interest for them to do so.
24. The present case is distinguishable from *ZH Bangladesh*. In contrast to that case, where the appellant worked whilst in the UK and used an alias to avoid detection by the immigration authorities, the appellant in this case has for 20 years used an alias to access benefits to which he is not entitled. That is not the same conduct as was at issue in *ZH Bangladesh*.
25. It may be, as Mr Gondall argues, that the appellant genuinely needed the benefits because he was incapable of working and took them reluctantly and only as a matter of necessity. But that does not change the fact that he was not entitled to the benefits, used deception to obtain them, and that his conduct has been at the expense of the tax payer. Even if the appellant's account as to why he was in receipt of benefits is accepted in full the FtT was entitled to find that his conduct constituted a sufficient basis to refuse leave under the suitability requirement specified in S-LTR 1.6. The FtT did not err, therefore, in finding that the appellant did not satisfy 276ADE.
26. Nor has the FtT erred in its approach to, and finding in respect of, Article 8 of the ECHR outside the Rules. In assessing the proportionality of his removal, the FtT took into account the appellant's length of residence in the UK, state of health and age but found that these were not sufficient, when weighed against the public interest, given in particular his unlawful receipt of public benefits, to tip the scales in his favour.
27. The appellant argues that the FtT failed to take into account that he would be destitute in Pakistan, but it is apparent from the decision that the FtT has had regard to the appellant's circumstances in Pakistan. The FtT made the findings at paragraph [43] that there was no evidence before the tribunal that the appellant would be unable to access medical treatment in Pakistan and that he has a sister in Pakistan. It is clear, in any event, that the FtT's view on proportionality is that the appellant's removal from the UK would not be disproportionate notwithstanding the difficulties he may face in Pakistan because of the strength of the public interest considerations favouring removal.
28. Although not referred to explicitly in the decision, it is apparent the FtT had in mind, when considering the public interest, paragraphs (1), (3) and (5) of Section 117B of the 2002 Act. Taking these into account, the FtT was

entitled to conclude when weighing the proportionality of the appellant's removal that the facts and considerations on the appellant's side of the scales, although significant, were not sufficient to outweigh the public interest and accordingly I find that the FtT has not made an error of law.

**Decision**

- a. The appeal is dismissed.
- b. The decision of the First-tier Tribunal did not involve the making of a material error of law and shall stand.
- c. No anonymity order is made.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 30 December 2015