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**The Upper Tribunal
(Immigration and Asylum Chamber)**
PA/08781/2016

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 12th July 2017

**Decision & Reasons
Promulgated
On 1st August 2017**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL FARRELLY

Between

MR.AW.W.

(ANONYMITY DIRECTION MADE)

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:

For the Appellant: Mr.FB.Ali of Aman Solicitors Advocates (London) Ltd.

For the Respondent: Mr.P.Nath, Home Office Presenting Officer.

DECISION AND REASONS

Introduction

1. Although it is the respondent who is appealing in these proceedings, for convenience, I will continue to refer to the parties as in the First-tier Tribunal.
2. The matter came before me by way of an error of law hearing on 28 February 2017 with the same representatives. I refer the parties to the decision and reasons given on that occasion. In summary, I found a material error in the decision of First tier Tribunal Judge Roots who allowed the appeal on a freestanding article 8 basis. The judge appears to have been under the misapprehension that there was no right of appeal under paragraph 276 ADE.
3. The original refusal letter considered his private life under paragraph 276 ADE (1) (iii) and recorded that he had not lived continuously in the United Kingdom for the prescribed 20 years. The refusal did not consider paragraph 276 ADE (v). This applied to the appellant's situation, bearing in mind he was 22 at the time of application and had been in the United Kingdom since he was 8, thus having spent half his life here. At the hearing before First tier Tribunal Judge Roots paragraph 276 ADE (v) was considered in the context of freestanding article 8 assessment. The judge concluded the appellant met 276 ADE of the rules and the respondent's decision was therefore disproportionate.
4. At the hearing the presenting officer pointed out that paragraph 276 ADE (v) was subject to the suitability grounds in S-LTR.1.2 to 2.3 and 3.1. The judge concluded that the appeal could be allowed because no issue suitability had been taken in the decision letter. It was my conclusion that the point having been raised at hearing it was incumbent upon the judge to deal with it.
5. My Directions were that the decision should be remade in the Upper Tribunal. Meantime, the respondent was to carry out checks as to whether any of the suitability grounds applied.
6. I have received a skeleton argument dated 11 July 2017 from the appellant's representative stating that no further information has been received from the respondent. At hearing today Mr Nath indicated that he had been unsuccessful in obtaining the information on this issue. I had assumed that when the issue was raised at first instance there was some cause for concern on suitability. Mr Nath asked for a further 14 days which was opposed by Mr.Ali. Although the respondent has been given a significant

amount of time to date I was prepared to allow the further 14 days sought.

7. I indicate to the parties that in the absence of any substantial material relating to suitability issue I was minded to allow the appeal under paragraph 276 ADE (v). 14 days now having passed and no further information being provided I allow the appeal on this basis. There has been no challenge to the negative findings in relation to the protection claim.

Decision

The appeal is allowed paragraph 276 ADE (v).

Deputy Upper Tribunal Judge Farrelly.

28th July 2017

