



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

Appeal Number: HU/04517/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 25 September 2019**

**Decision & Reasons Promulgated
On 14 October 2019**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**ZIA UR RAHMAN
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Sowerby instructed by Thamina Solicitors

For the Respondent: Mr T Melvin, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of the First-tier Tribunal dismissing his appeal against the respondent's refusal to grant him leave to remain on the basis of long residence, pursuant to paragraph 276B and paragraph 276D of the Immigration Rules HC 395 (as amended). The appellant is a Bangladeshi citizen.
2. The appellant entered the United Kingdom with student leave on 30 August 2008. He has not had extant leave since 7 August 2013, when his Tier 4 leave was curtailed on ETS/TOEIC grounds. The appellant contends that his leave was unlawfully and/or perversely curtailed and that the

interruption in his lawful presence in the United Kingdom which ensued should be disregarded.

3. On 15 December 2017 the appellant made an application for indefinite leave to remain on the basis of 10 years' lawful residence. On that date, he had been in the United Kingdom for 9 years and 4 months. He did not have the requisite 10 years' residence and accordingly this appeal never had any prospect of success.
4. The appellant's argument about the application of paragraph 276B in conjunction with paragraph 39E falls away by reason of the decision in *Ahmed v Secretary of State for the Home Department* [2019] EWCA Civ 107. A chronology has been provided which makes that clear beyond a peradventure. It is therefore not necessary for me to consider what should have happened about the gap in the appellant's residence caused by the curtailment on ETS TOEIC grounds of his student leave on 7 August 2013 and I make no finding on that.
5. The appeal is dismissed and the First-tier Tribunal decision stands.

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.

Signed **Judith AJC Gleeson**
2019

Date: 9 October

Upper Tribunal Judge Gleeson